SUPREME COURT OF THE UNITED STATES.

No. 427.

THE ANNAPOLIS AND ELK RIDGE RAILROAD COMPANY, PLAINTIFF IN ERROR,

vs.

THE COUNTY COMMISSIONERS OF ANNE ARUNDEL COUNTY.

IN ERROR TO THE COURT OF APPEALS OF THE STATE OF MARYLAND.

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1 STATE OF MARYLAND, *set:*

At a court of appeals of the State of Maryland begun and held for the said State, at the city of Annapolis, on the first Monday of October, it being the first day of the said month in A. D. one thousand eight hundred and seventy-seven, and of the Independence of the United States of America the one hundred and second—present, the honorable James L. Bartol, chief judge; and associate judges James A. Stewart, John M. Robinson, Richard Grason, Richard H. Alvey, Oliver Miller, Richard I. Bowie, George Brent—among other were the following proceedings, to wit:

2 *Petition.—Filed* 14 *March*, 1877.

In the circuit court for Anne Arundel County.

ANNAPOLIS AND ELKRIDGE RAILROAD CO. *vs.* THE COUNTY COMMISSIONERS OF ANNE ARUNDEL CO. } In the circuit court for Anne Arundel County.

To the honorable the judges of the circuit court for Anne Arundel County:

The petition of the Annapolis and Elkridge Railroad Company respectfully represents unto your honors that by the act of assembly of December session, 1836, chapter 298, the said company was incorporated and authorized to construct and keep in repair a railroad from the city of Annapolis to connect with the Baltimore and Washington Railroad in the manner therein specified, and for said purposes to purchase, hold, sell, lease, and convey estates, real, personal and mixed; that in pursuance of the said charter a company was formed, the stock was subscribed by the State of Maryland and sundry citizens of the State, and a railroad was constructed by the said company from Annapolis to the said Baltimore and Washington Railroad, which has been kept in repair and in operation since the year eighteen hundred and forty to the present time; that the said company became and now is the owner of the said road in the manner authorized by the said act of assembly, and also of other property necessary for the construction, repair, and operation of said road, and that it owns no property for any other purpose or purposes than such as are specified in and authorized by the said act of incorporation.

And your petitioner also represents that by the fifth section of its said charter it is provided as follows: "The president and directors of said company may have and use all the powers and privileges, and shall be subject to the same obligations that are provided in the 14th, 15th, 16th, 17th, 18th, 19th, 20th, 21st, 22nd, and 23d section of the act entitled an Act to incorporate the Baltimore and Ohio Railroad Company;" whereby, as your petitioners insists, the said sections were incorporated into and became parts of its charter.

And your petitioner further shows that by the said 18th section of the act last mentioned, to wit, the charter of the Baltimore and Ohio Railroad Company, it is provided, among other things, as follows: "And the shares of the capital stock of the said company shall be deemed and considered personal estate, and shall be exempt from the imposition of any tax or burthen by the State's assenting to this law;" whereby, as your petition insists and charges, all the property owned by the said

Annapolis and Elkridge Railroad Company was forever exempted from all taxes, assessments, and burthens of every kind whatsoever, and in verification of the statements and pretensions herein set forth,
3 your petitioner refers to its said charter and to the charter of the Baltimore and Ohio Railroad Company as parts of this petition, to be found among the published statutes of the State, which your petitioner prays leave to use and rely upon at the hearing of this cause, as fully as if certified copies thereof were herewith filed.

And your petitioner also shows in support of its claim of exemption, that no part of its property had ever been assessed for the payment of taxes or burthens for any purpose whatever, except under the acts of assembly hereafter mentioned.

But now so it is, your petitioner states, the assessors for Anne Arundel County and the city of Annapolis, appointed under and in pursuance of the act of 1876, ch. 260, "to provide for the general valuation and assessment of property in this State," claiming to act under the said law, and under the act of 1876, ch. 159, "to provide for the assessment and taxation of the property of railroad companies in this State, for county and municipal purposes, and to repeal all laws or parts of laws inconsistent with the provisions of this act," have embraced and included in their valuation and assessment of the property in the said county and city, and made return of the same to the board of control and review of the said county, all the railroad track of the said company, all its rolling stock, all the real estate of the said company, and the improvements and buildings thereon, and assessed the same at the valuation of $100,945.00, as will appear by reference to the extract from the books of assessment in the office of the county commissioners of said county, returned to the said office on the 13 day of February, 1877, by the said board of control and review, and herewith filed, marked A, as part of this petition; all which property, your petitioner alleges, is owned and held by the said company for constructing, repairing, and operating its said road, and for no other use or purpose whatever, and the same is indispensably necessary for said purposes.

Your petitioner respectfully avers and charges that the said assessment is in violation of the charter privileges of the said company as hereinbefore set forth, and of its exemption from the imposition of any tax or burthen in virtue of the said 18th section of the charter of the Baltimore and Ohio Railroad Company, incorporated into and made part of the charter of the Annapolis and Elkridge Railroad Company as before mentioned, and insists that the said property should be struck from the assessment books of the said county and city.

To the end that the said property may be declared to be exempt from assessment and taxation, and that the said county commissioners may be directed to strike the same from the assessment books, your petitioner prays that this honorable court will take cognizance of the subject matter of this petition, as provided by the said act of 1876, ch. 260, and that the said county commissioners may be summoned to appear and answer this petition, and abide by and perform such order as may be passed in the premises.

And your petitioner, as in duty, &c.

W. H. TUCK,
For Pet'r.

In the circuit court for Anne Arundel County. July term, 1877.

THE ANNAPOLIS AND ELKRIDGE RAILROAD Company
vs.
THE COUNTY COMMISSIONERS FOR ANNE Arundel County.

4 This case having been heard and considered by the court, it is ordered this 19th of July, 1877, that the county commissioners of Anne Arundel County strike the property in these proceedings mentioned from the list of property assessed and valued to the Annapolis & Elkridge Railroad Company, the court being of opinion and determining that such property is not subject to valuation and assessment.

OLIVER MILLER.
WM. N. HAYDEN.
E. HAMMOND.

Exhibit A.—Filed 14 *March*, 1877.

OFFICE OF COUNTY COMMISSIONERS FOR ANNE ARUNDEL COUNTY,
Annapolis, February 17*th*, 1877.

I, Geo. Miller Duvall, clerk of the board of county commissioners for Anne Arundel County, do hereby certify that the following is a true statement of the aggregate amount of property of every description, together with the assessed value thereof, with which the Annapolis & Elkridge Railroad Company is assessed upon the assessment books for Anne Arundel County, as returned by the board of control and review to this office, on the 13th day of February, 1877, viz:

For amount of property assessed in the 2d district, 9½ miles railroad track, @ $3,000 per mile	$28,500 00
For 10 railroad track, @ $3,000 per mile, assessed in the 4th district	30,000 00
For 1 lot 200x197, West street, @ $15 front foot	3,000 00
1 lot n'east side railroad, adjoining Geo. Franklin	500 00
1 lot 203x163, West and Calvert streets, @ $15 front foot	3,045 00
Improvements and buildings thereon	2,500 00
Rolling stock of company	30,400 00
1 mile of track	3,000 00
	$100,945 00

In witness whereof I hereunto subscribe my name and affix the seal of the office of the county commissioners for A. A. County, this 17th day of Feb'y, A. D. 1877.

Test:
[Seal's place.] GEO. MILLER DUVAL, *Clk.*

Answer of respondents.—Filed 15 *March*, 1877.

In the circuit court for Anne Arundel County.

THE ANNAPOLIS & ELKRIDGE RAILROAD COMPANY
vs.
THE COUNTY COMMISSIONERS OF ANNE ARUNDEL County.

To the honorable the judges of the circuit court for Anne Arundel County:

The answer of the county commissioners of Anne Arundel County to the petition of the Annapolis and Elkridge Railroad Company in this court filed:

These respondents, answering, admit all the allegations in said petition except two, viz:

They deny that by the terms of the fifth section of the charter of the petitioner, the exemption of the stock mentioned in the 18th section of the charter of the Baltimore and Ohio Railroad Company is incorporated into the charter of the petitioner.

They further deny that the exemption of the stock mentioned in the 18th section of the charter of said B. & O. R. R. is an exemption of the property of the corporation.

All of which is respectfully submitted, with the prayer of your respondents to be hence dismissed, with costs, &c.

HENRY AISQUITH,
Attorney for County Commissioners.

Prayer of appeal.—Filed 6 *Sept.*, 1877.

In the circuit court for Anne Arundel County. July term, 1877.

THE ANNAPOLIS & ELKRIDGE RAILROD CO.
vs.
THE COUNTY COMMISSIONERS OF ANNE ARUNDEL County.

To SPRIG HARWOOD, *Clerk:*

You will please enter a pray' of appeal from the judgment and order of the court in the above case, and transmit the original papers to the court of appeals of the State of Maryland.

HENRY AISQUITH,
Att'y for Defendants.

Copy of docket entries.

In the circuit court for Anne Arundel County. July term, 1877.

ANNAPOLIS & ELKRIDGE RAILROAD COMPANY
vs.
THE COUNTY COMMISSIONERS OF ANNE ARUNDEL County.

Pet. and Exhibit A filed.
Answer of respondent filed.

1877, July 18 and 19. Case argued by counsel.
1877, July 19. Order of court filed.
Sept. 6. Prayer of appeal from the judgment and order of court fd. in favor of plaintiffs.
Test:

SPRIGG HARWOOD, *Clerk.*

6 And now comes unto the court of appeals here as well the said The County Commissioners of Anne Arundel County, by attorney-general C. J. M. Gwinn and Henry Aisquith, esq., their attorneys, as the said The Annapolis and Elkridge Railroad Company, by William H. Tuck and P. H. Tuck, esqs., its attorneys, and thereupon, on motion of the said The Annapolis and Elkridge Railroad Company, by its attorneys aforesaid, it is ruled by the court here that the said The County Commissioners of Anne Arundel County assign the errors in the record of proceedings aforesaid, or in the passing the order aforesaid, so as aforesaid brought before the court of appeals here, for correcting the errors supposed to be therein, or judgment by the court of appeals here will be entered against them in default thereof; and the said County Commissioners of Anne Arundel County, by their attorneys aforesaid, say that, in the record of proceedings aforesaid, and also in the passing of the order aforesaid, there is manifest error in this, to wit, that by the record aforesaid it appears that the order aforesaid in the plea
7 aforesaid passed was passed in favor of the said The Annapolis and Elkridge Railroad Company against the said The County Commissioners of Anne Arundel County, when by the law of the land that order ought to have been passed in favor of the said County Commissioners of Anne Arundel County against the said Annapolis and Elkridge Railroad Company; therefore, in that there is manifest error, and they pray that the order aforesaid, for that error and others being in the record of proceedings aforesaid, may be reversed, annulled, and held entirely as void; and that they the said County Commissioners of Anne Arundel County may be restored to all things which they have lost by occasion of the said order; and that the said The Annapolis and Elkridge Railroad Company may rejoin in the errors aforesaid, and so forth. And thereupon, it is ruled by the court of appeals here that the said The Annapolis and Elkridge Railroad Company join in the errors by the said The County Commissioners of Anne Arundel County above assigned in the record of proceedings aforesaid, or judgment by the court of
8 appeals here will be rendered against it in default; and the said The Annapolis and Elkridge Railroad Company, by its attorneys aforesaid, says there is no error in the record of proceedings aforesaid, nor in the passing of the order aforesaid, and it prays that the court of appeals here will proceed to the examination as well of the record of proceedings aforesaid, as of the matters aforesaid, by the said The County Commissioners of Anne Arundel County above for error assigned, and that the said order may be in all things affirmed, and so forth. Thereupon, further process of and upon the premises between the parties aforesaid is, by virtue of an act of assembly in such cases made and provided, continued before the court of appeals here until the first Monday in October next; the same day is given to the said parties there then to hear the judgment of the said court of appeals hereof and upon the said premises, and so forth.

And now, at this day, to wit, the said first Monday in October, being the first day of the said month, in the year of our Lord 1877, come
9 again into the court of appeals here the parties aforesaid, by their

attorneys aforesaid, whereupon as well the record and proceedings aforesaid, and the order passed in form aforesaid, as the matters aforesaid by the said The County Commissioners of Anne Arundel County above for error assigned, being seen, and by the court of appeals here fully understood, and mature deliberation thereupon had, for that it appears to the court of appeals here that there is error in the record of proceedings aforesaid, and also in the passing of the order aforesaid; therefore, it is ordered by the court of appeals here that the order aforesaid, passed in form aforesaid, be and the same are hereby reversed and petition dismissed.

It is also considered by the court here that the said The County Commissioners of Anne Arundel County recover against the said The Annapolis and Elkridge Railroad Company the sum of costs in the circuit court for Anne Arundel County, also the sum of seventy-
10 three dollars and fifty cents, costs in the court of appeals, by the court here adjudged unto the said The County Commissioners of Anne Arundel County on their assent, for their costs and charges by it laid out and expended about the prosecution of the appeal aforesaid, and that the said The County Commissioners of Anne Arundel County have thereof execution, &c.

MEMORANDUM.—Order reversed and petition dismissed by the court on the 1st day of March, 1878, and execution awarded for the sum of $, costs in the circuit court for Anne Arundel County, and $73.50, costs in the court of appeals of Maryland.

Test:

JAMES S. FRANKLIN, *Clerk.*

On the 1st day of March, in the year of our Lord one thousand eight hundred and seventy-eight, the court of appeals filed the following opinion, to wit:

11 Court of appeals of Maryland. October term, 1877.

COUNTY COMMISSIONERS OF ANNE ARUNDEL County
vs.
THE ANNAPOLIS & ELKRIDGE RAILROAD COMPANY.

ALVEY, judge, delivered the opinion of the court.

BARTOL, ch. judge, dissenting.

This appeal is from an order of the circuit court of Anne Arundel County, directing certain property to be stricken from the list of assessment and valuation, made under the acts of 1876, ch. 159, and 1876, ch. 260; both acts relating to the assessment and valuation of the taxable property of the State, and, taken together, from one system of assessment.

The question presented is, whether the property, real and personal, of the appellee, found within the limits of Anne Arundel County, and assessed, under the provisions of the act of 1876, c. 159, for county purposes, is liable to such assessment?

12 The appellee is a railroad corporation, working its road by steam-power, and the line of its road extends from the city of Annapolis to a point of intersection with the Washington branch of the Baltimore and Ohio Railroad, known as the Annapolis Junction; the whole line being within the county.

The Baltimore and Ohio Railroad Company was incorporated by the act of 1826, c. 123, and the appellee was incorporated by the act of 1836, c. 298. In the latter act, instead of setting forth at length the various provisions containing the rights, powers, and duties with which the corporation was intended to be invested, and required to execute, reference is made to sections of the previous act incorporating the Baltimore and Ohio Railroad Company for the specification and limitation of many of the rights, powers, and privileges granted as well as duties imposed; and among the sections of the appellee's charter making such reference is the 5th, which is as follows: "That the president and directors of the said company shall be, and they are hereby, invested with all the
13 rights and powers necessary to the construction and repair of a railroad from the city of Annapolis to connect with the Baltimore and Washington Railroad, not exceeding sixty-six feet in width, with as many sets of tracts as the said president and directors, or a majority of them, may think necessary, and for this purpose the said president and directors may have and use all the powers and privileges, and shall be subject to the same obligations that are provided in the fourteenth, fifteenth, sixteenth, seventeenth, eighteenth, nineteenth, twentieth, twenty-first, twenty-second, and twenty-third sections of the aforesaid act, entitled 'An act to incorporate the Baltimore and Ohio Railroad Company.'"

The 14th, 15th, 16th, and 17th sections of the act of 1826, c. 123, just referred to, are devoted to specifying and defining the rights and powers with which the president and directors of that company were and are invested in order to enable them to procure the right of way and construct and keep in repair a railroad from the city of Baltimore to the river Ohio, and defining the duties and obligations incident thereto; and among the powers granted were those to build bridges, erect
14 warehouses, fix scales, and also to make lateral roads in any direction whatever, in connection with the main line of said road. The 18th section, which is the important one, so far as this case is concerned, provides, in the first place, that the president and directors of the company should be invested with power to purchase, with the funds of the company, all necessary machines, carriages, and other means of transportation for the operation of the road. In the second place, that the president and directors should have power to charge and exact tolls at certain fixed rates per mile, for the transportation of persons and freight on and over the road between its termini. In the third place, that it should not be lawful for any other company or any person whatever to use or travel upon the road without the license or permission of the president and directors of the company; and then follow these two distinct clauses, which, as will be observed, contain no delegation of powers or privileges to the president and directors of the company, but declare "that the said road or roads, with all their works, improvements and profits, and all the machinery of transportation used
15 on said road, are hereby vested in the said company incorporated by this act, and their successors, forever; and the shares of the capital stock of the said company shall be deemed and considered personal estate, and shall be exempt from the imposition of any tax or burthen by the States assenting to this law."

Now, it is contended by the appellee that, by the 5th section of its charter and the reference therein to the 18th section of the act of 1826, c. 123, full and complete exemption from all taxation whatever was given of the shares of the capital stock of the company; and, as the shares of the stock represent the property of the company, both real

and personal, therefore all its property is exempt from taxation, whether for State or county purposes. There is no other provision or reference in the appellee's charter upon which reliance is placed to support the claim to exemption, and whether such claim be well founded or not depends upon the proper construction of the 5th section of the charter before recited.

If it be true, as contended by the appellee, that such exemption
16 was made, then the act of incorporation accepted by the corporators created a contract between the State and the corporators that the State is inhibited by the Constitution of the United States from violating; and it is settled by repeated decisions of this court, which we are not disposed to disturb, that the exemption of the shares of the capital stock operates as an exemption of the property of the corporation, or so much of it as the corporation is fairly authorised to hold for the proper exercise of its franchises; and this upon the principle that the shares of the stock in the hands of the shareholders represent the property held by the corporation.

But did the State, by the act of incorporation of the appellee, surrender its power of taxation, and afford good ground for the claim of exemption now made?

Before proceeding to a more particular examination of the terms of the statute, and the nature of the powers and privileges granted, it is well to refer to the settled principle of construction that applies in a case like the present.

17 This, it must be borne in mind, is the case of a corporation deriving its existence and all its powers and franchises from the State, and which holds its property under the protection of the State, but which asserts and claims that the State has surrendered all its taxing power over the shares of the capital stock and property of the corporation. To make out the claim to this exemption from the taxing power of the State so essential to the support of its government, it is incumbent upon the corporation to show that the power to tax has been clearly relinquished by the State, and if this has not been done in clear and explicit terms, or by necessary implication, the question whether or not the exemption has been granted must be resolved in favor of the State. Wilmington R. Co. vs. Reed, (13 Wall, 264.)

In the case of the Providence Bank vs. Billings & Pillman, (4 Pet. 514,) a leading case upon this subject, there was a claim to exemption from taxation set up by a corporation as against the State creating it; and the Supreme Court, speaking by Chief Justice Marshall, in
18 passing upon the question of the relinquishment of the taxing power by the State, said: "It would seem that the relinquishment of such a power is never to be assumed. We will not say that a State may not relinquish it, that a consideration sufficiently valuable to induce a partial release of it may not exist, but as the whole community is interested in retaining it undiminished, that community has a right to insist that its abandonment ought not to be presumed in a case in which the deliberate purpose of the State to abandon it does not appear." And in the case of the Philadelphia & Wilmington R. Co. vs. The State of Maryland (10 How., 376), the case of a Maryland corporation resisting the enforcement of a Maryland tax law, upon claim of exemption, Chief Justice Taney, as the organ of the court, said: "Certainly there is no reason why the property of a corporation should be presumed to be exempted, or should not bear its share of the necessary public burdens as well as the property of individuals. This cour on several occasions has held that the taxing power of a State is neve

presumed to be relinquished, unless the intention to relinquish is
19 declared in clear and unambiguous terms. In the act incorporating this company, there is nothing from which such an inference could possibly be drawn; and, standing upon its charter alone, the tax was, without doubt, lawfully imposed." The principle of these cases has been recognized and asserted by this court on more than one occasion.

Now, with this principle of construction in mind, and conceding that the word privilege is comprehensive enough, when used in a proper connection, to include the immunity claimed, what powers and privileges were granted by the 5th section of the appellee's charter? It will be observed that the first clause of that section invested the president and directors of the company with all the rights and powers necessary to the construction and repair of the road. But this was a general and undefined delegation of power which required to be rendered more specific. Hence the section proceeds to declare that, for this purpose, that is to say, the construction and repair of the road, the president and directors may have and use all the powers and privileges, and
20 shall be subject to the same obligations, that are provided in the particular sections mentioned of the act incorporating the Baltimore and Ohio Railroad Company. And without attempting to specify all the several powers and privileges thus conferred upon the appellee, it is all-sufficient for this case that we should conclude, as we do, that it is only those powers and privileges which were necessary, and which the president and directors could hold and use for the construction and repair of the road, that were intended to be granted, and which were defined by reference to the sections of the act incorporating the Baltimore and Ohio Railroad Company. In these sections were to be found the grants of power to exercise the right of eminent domain, under proper limitations and restrictions; so the privilege of crossing other roads, and taking materials for the construction and repair of the road. But that all the powers and privileges granted by the sections referred to were intended to be conferred upon the appellee, by the reference to those sections, is a proposition that we cannot adopt for a moment. For instance, the power to make lateral roads was certainly not
21 intended to be granted to the appellee, nor can it be maintained that the power to regulate tolls, under the restriction imposed by the 18th section of the Baltimore and Ohio Railroad Company's charter, was adopted as applicable to the appellee, for the subject as to the rates of tolls is provided for by the 6th section of the appellee's charter; and certainly it was not intended by the grant of powers and privileges to the president and directors for the purposes expressed to invest them with all the property of the company instead of vesting it in the company, as is done by the 18th section of the act of 1826, c. 123. It is therefore clear that the powers and privileges granted by reference to the 18th section of the act of 1826, ch. 123, were only those necessary for the construction and repair of the road; and as the grant of exemption from taxation was not one of the privileges necessary or in any manner appropriate to be held and used by the president and directors to enable them to construct and repair the road, it follows that the exemption claimed was not conferred upon the appellee. Indeed, from the terms employed in the 5th section of the charter, it is impos-
22 sible to say that it was the deliberate purpose of *of* the State to abandon its powers of taxation, and that such purpose is clearly and unambiguously expressed by the legislature; conditions, as we have seen, essential to the support of the claim of exemption asserted

by the appellee. If the legislature had really intended to surrender the State's right of taxation, we cannot suppose that so important a matter would have been left in the least doubt, or in any manner dependent upon construction, but would have been plainly expressed. And as affording additional support to the conclusion that the taxing power was not designed to be relinquished in the grant of the appellee's charter, we may refer to legislation of the State which was recent at the time such charter was granted, and the position that the State had assumed in regard to its powers of taxation.

The legislation to which we refer is the act known as the "eight-million loan bill," passed on the 4th of June, 1836. That act was passed to aid and promote the work of internal improvements that had been undertaken in the State, and it provided for the issue of State
23 stock or bonds to the amount of eight millions of dollars, which the State would be bound to redeem. By the 15th section of that act it was declared, with a view, manifestly, of giving support to the credit of the State, that should it become necessary to levy a direct tax for the support of the government or to sustain the public credit, such tax should be laid, according to the 13th article of the declaration of rights, on all property, of every kind and description whatever, found within the State, and the faith of the State was thereby expressly pledged to lay such tax accordingly, and to provide for the payment of its debts, principal and interest; and all acts or parts of acts in contravention of the constitutional and equitable principles therein contained were declared to be thenceforth repealed, abrogated, and annulled. Within less than a year after the passage of this act the appellee obtained its charter, and it is not probable or fair to suppose, in the absence of a plain and direct expression to the contrary, that the legislature either deliberately designed a breach of the pledge solemnly
24 made but a few months before, or a departure from the policy so emphatically declared, or that it would have entertained a proposition to do so with respect to a corporation like the appellee. Especially is this not to be supposed in regard to the charter of the appellee, as by the 10th section of that charter the eight-million loan act is referred to in terms, and the subscription to the capital stock of the company authorized to be made by the treasurer of the State was required to be paid out of money that might be realized under the eight-million loan act, and that alone. The appellee was, therefore, a recipient of a part of the very funds for which the faith of the State stood pledged that no property within her borders should escape taxation.

Being of opinion that the property mentioned in the appellee's petition, and which was ordered to be stricken from the list of assessment and valuation, is legally subject to such assessment and valuation, the order appealed from will be reversed, and the appellee's petition dismissed.

Order reversed and petition dismissed.

25 And thereupon, afterwards, to wit, on the 2nd day of April, 1878, the Annapolis and Elkridge Railroad Company filed in court here the following petition, in the words following, to wit:

To the honorable James L. Bartol, chief judge of the court of appeals of Maryland:

The petition of the Annapolis and Elkridge Railroad Company respectfully represents:

That a final judgment has been rendered by the court of appeals of Maryland in a suit therein pending, wherein the county commissioners of Anne Arundel County are appellants and the Annapolis and Elkridge Railroad Company is appellee.

That the court of appeals aforesaid is the highest court of law in the State of Maryland in which a decision in the said suit could be had.

That in the said suit there is drawn in question the validity of the act of the general assembly of Maryland passed at the session thereof for the year 1876, chapter 159, and also of the act of the said general assembly passed at the same session, chapter 260, and of an authority exercised under the said statutes, on the ground of
26 their being, as against the said Annapolis and Elkridge Railroad Company, repugnant to the Constitution of the United States, and that said decision is in favor of the said statutes and of the authority exercised under the same, and against the exemption set up and claimed by the said company under its charter.

That in said suit a right and privilege are set up and claimed under the Constitution of the United States, and the decision is against the right and privilege set up and claimed under such Constitution. All of which appears on the face of the record accompanying this application.

Wherefore to the end that the said judgment may be re-examined and reversed or affirmed in the Supreme Court of the United States upon a writ of error, your petitioners pray that a citation may be issued in the same manner as if the said judgment had been rendered in a circuit court of the United States.

M. BLAIR,
W. H. TUCK,
P. H. TUCK,
For Pet's in Error.

27 The within foregoing petition is granted and the writ of error is allowed as therein prayed.

JAS. L. BARTOL,
Chief Judge of the Court of Appeals of Maryland.

ANNAPOLIS, *March 29th*, 1878.

And on the same day and year last aforesaid (April 2nd, 1878), the writ of error was filed, in the words following, to wit:

UNITED STATES OF AMERICA, *ss*:

The President of the United States to the honorable the judges of the court of appeals of Maryland, greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea, which is in the said court of appeals of Maryland, before you, or some of you, being the highest court of law or equity of the said State in which a decision could be had in the said suit between the County Commissioners of Anne Arundel County, appellants, and the Annapolis and Elk Ridge Railroad Company, appellee, wherein is drawn
28 in question the validity of the act of the general assembly of Maryland, passed at the session thereof for the year 1876, chapter 159, and also of the act of the said general assembly, passed at the same session, chapter 260, and of an authority exercised under the said statutes on the ground of their being, as against the said Annapolis and Elk Ridge Railroad Company, repugnant to the Constitution

of the United States, and that said decision is in favor of the said statutes, and of the authority exercised under the same, and against the exemption set up and claimed by the said company under its charter; that in said suit a right and privilege are set up and claimed under the Constitution of the United States, and the decision is against the right and privilege set up and claimed under such constitution, and wherein was drawn in question the validity of a treaty or statute of, or an authority exercised under, the United States, and the decision was against their validity; or wherein was drawn in question the validity of a statute of, or an authority exercised under, said State, on the ground of their being repugnant to the Constitution, treaties, or laws of the United States, and the decision was in favor of such, their validity; or wherein was drawn in question the construction of a clause of the Constitu-
29 tion, or of a treaty or statute of, or commission held under, the United States, and the decision was against the title, right, privilege, or exemption specially set up or claimed under such clause of the said Constitution, treaty, statute, or commission, a manifest error hath happened, to the great damage of the said Annapolis and Elk Ridge Railroad Company, as by its complaint appears; we being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the second Monday of October next, in the said Supreme Court to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and custom of the United States should be done.

30 Witness the honorable Morrison R. Waite, Chief Justice of the said Supreme Court, the thirtieth day of March, in the year of our Lord one thousand eight hundred and seventy-eight.

Issued 30th March, 1878.

{ THE SEAL OF THE CIRCUIT COURT MARYLAND. }

JAMES W. CHEW,
Clerk of the Circuit Court of the United States for the Fourth Circuit, in and for the Maryland District.

Allowed by—

JAMES L. BARTOL,
Chief Judge of the Court of Appeals of Maryland.

On the same day and year last aforesaid (April 2nd, 1878), the following bond was filed, in the words following, to wit:

Know all men by these presents that we, The Annapolis and Elk Ridge Railroad Company, Sprigg Harwood, Nathan E. Berry, and William H. Bians, are held and firmly bound unto The County Commissioners of Anne Arundel County, in the full and just sum of three thousand dollars, to be paid to the said County Commissioners of Anne Arundel County, its certain attorney, successors, or assigns; to which pay-
31 ment, well and truly to be made, we bind ourselves, our heirs, executors, or administrators, jointly and severally, by these presents, sealed with our seals and dated this 29th day of March, in the year of our Lord one thousand eight hundred and seventy-eight.

Whereas lately, at a session of the court of appeals of Maryland, in a suit depending in said court between the said Annapolis and Elk Ridge

Railroad Company, petitioner, in the circuit court of Anne Arundel County, and the County Commissioners of Anne Arundel County, defendants, and carried on appeal to the said court of appeals, judgment was rendered against the said Annapolis and Elk Ridge Railroad Company, and the said Annapolis and Elk Ridge Railroad Company having obtained a writ of error, and filed a copy thereof in the clerk's office of the said court, to reverse the judgment in the aforesaid suit, and a citation directed to the said County Commissioners of Anne Arundel County, citing and admonishing them to be and appear at a Supreme Court of the United States, to be holden at Washington the second Monday of October next:

32 Now, the condition of the above obligation is such, that if the said Annapolis and Elk Ridge Railroad Company shall prosecute the said writ to effect, and answer all damages and costs if it fail to make its plea good, then the above obligation to be void; else to remain in full force and virtue.

ANNAPOLIS ELK RIDGE RAILROAD COMPANY,
By WM. H. BIANS, *Pres.* [L. S.]
SPRIGG HARWOOD. [L. S.]
N. E. BERRY. [L. S.]
WM. H. BIANS. [SEAL.]

Sealed and delivered in presence of—
WM. H. TUCK.

Approved by—

JAS. L. BARTOL,
C. J. of Court of Appeals of Maryland.

MARCH 30*th*, 1878.

On the same day and year last aforesaid (April 2nd, 1878), the following citation was filed, in the words following, to wit:

33 The United States of America to the County Commissioners of Anne Arundel County, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington on the second Monday of October next, pursuant to a writ of error, filed in the clerk's office of the court of appeals of the State of Maryland, wherein the Annapolis and Elkridge Railroad Company is plaintiff in error, and you are defendant in error, to show cause, if any there be, why judgment rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the honorable James L. Bartol, chief judge of the court of appeals of Maryland, this thirtieth day of March, in the year 1878.

JAS. L. BARTOL.
Chief Judge of the Court of Appeals of Maryland.

34 Service admitted this 1st day of April, 1878.

HENRY AISQUITH,
State's Attorney for Anne Arundel County and Attorney for Defendant in Error.

In pursuance whereof, and according to the form and effect of the act of Congress of the United States of America in such case made and pro-

vided, a transcript of the record and proceedings in the matter aforesaid, so as aforesaid rendered, with all things concerning the same, together with the said writ of error, are hereby transmitted to the said Supreme Court of the United States of America accordingly, &c.

JAMES S FRANKLIN
Clerk of the Court of Appeals of Md.

MARYLAND, *sct:*

35 I, James S. Franklin, clerk of the court of appeals of Maryland do hereby certify that the aforegoing is truly taken from the record of proceedings of the court of appeals aforesaid.

In testimony whereof I have hereunto set my hand as clerk and affixed the seal of the said court of appeals, this twenty-sixth day of April, A. D. 1878.

[SEAL.]

JAS. S. FRANKLIN,
Clerk Court of Appeals of Md.

(Indorsement on cover:) No. 427. The Annapolis and Elkridge Railroad Company, plaintiff in error, vs. The County Commissioners of Anne Arundel County. Maryland c't of appeals. Filed 7th June, 1878.

157.

OFFICE SUPREME COURT U.S.
FILED
DEC 2 1880
JAMES H. McKENNEY, Clerk.

Dec 16 1880

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, No. 157.

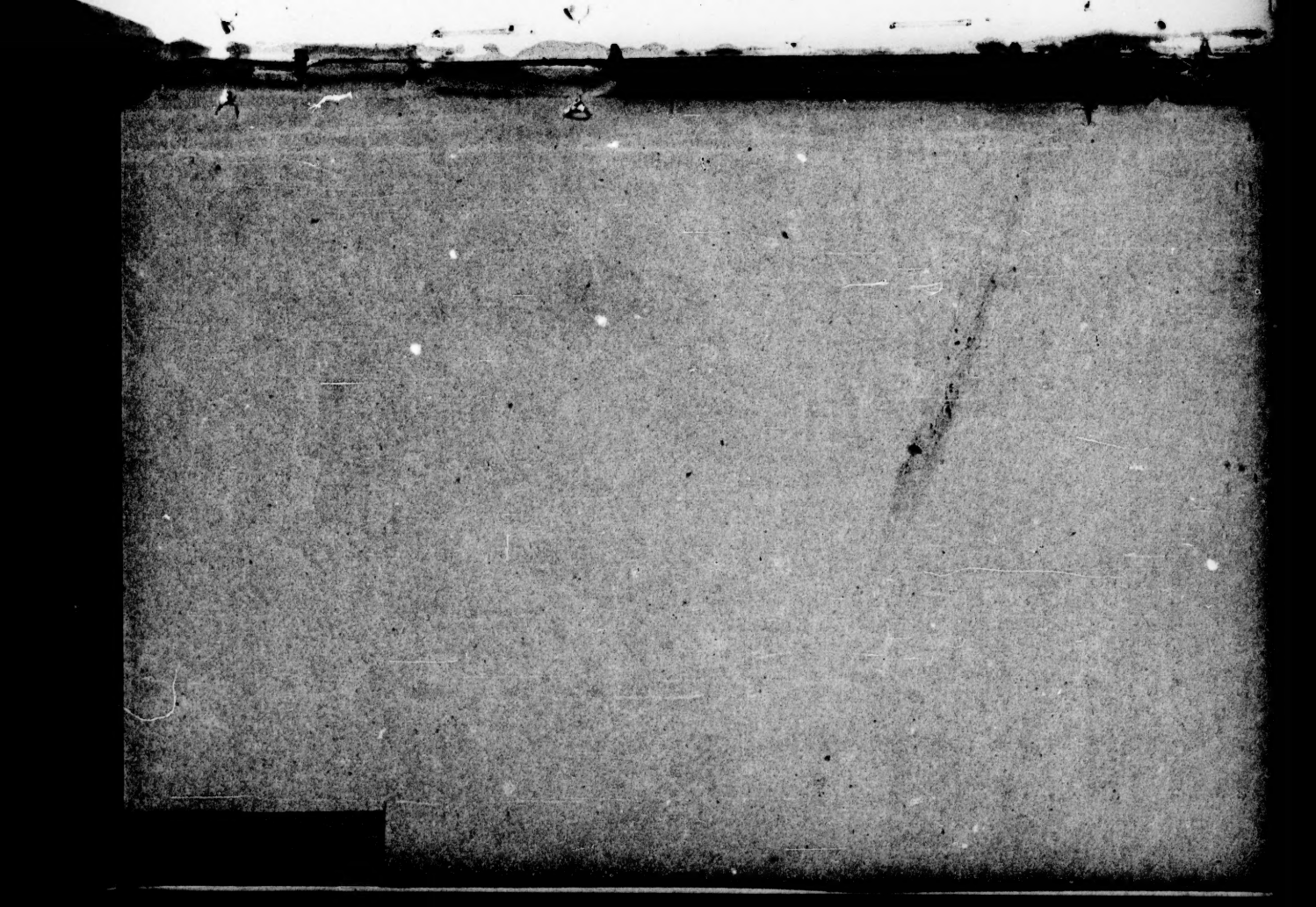
THE ANNAPOLIS AND ELKRIDGE RAILROAD COMPANY, PLAINTIFF IN ERROR,

vs.

THE COUNTY COMMISSIONERS OF ANNE ARUNDEL COUNTY.

IN ERROR TO THE COURT OF APPEALS OF THE STATE OF MARYLAND.

BRIEF OF THE PLAINTIFF IN ERROR.



Supreme Court of the United States,

October Term, No. 159.

THE ANNAPOLIS AND ELK RIDGE RAILROAD COMPANY, PLAINTIFF IN ERROR,

vs.

THE COUNTY COMMISSIONERS OF ANNE ARUNDEL COUNTY, DEFENDANTS IN ERROR.

BRIEF OF THE PLAINTIFF IN ERROR.

STATEMENT OF FACTS.

The question presented by this case is whether the railroad track and other property of the plaintiff in error, lying within Anne Arundel County, Maryland, are liable to taxation under the assessment laws of the State, exemption from which is claimed by the Company under the provisions of its charter, which was passed during December session 1836, ch. 298; writ on 21st March, 1837.

The case began in this way: The Legislature, at its session of 1876, passed laws for the assessment and valuation of property in the State—chapter 159 for the assessment of railroads, and chapter 260 for the assessment of all property. The track and other property of this Company were assessed to the amount of $100,945.00, as stated in the exhibit filed with the petition (record 3). The property of the Company had never before been assessed for the payment of taxes. This is stated in the petition and admitted by the answer. The 28th section of the Act of 1876, ch. 260, provides for the correction of errors in assessments by application to the Circuit Court of the County, and, in pursuance of this remedy, the plaintiff in error filed a petition (record 1–2) setting forth its corporate capacity and its ownership of the road since the year 1840, and that by the 5th section of its charter it is provided: "The president and directors of the said Company may have and use all the powers and privileges, and shall be subject to the same obligations that are provided in the 14th, 15th, 16th, 17th, 18th, 19th, 20th, 21st, 22d and 23d sections of the Act, entitled, An Act to incorporate the Baltimore and Ohio Railroad Company," whereby, as the Company insisted, the

said recited sections were incorporated into and became parts of its charter. And the said Company also stated that by the 18th section of the charter of the Baltimore and Ohio Railroad Company, it is provided, among other things, as follows: And the shares of the capital stock of the said Company shall be deemed and considered personal estate, and shall be exempt from the impositions of any tax or burthen by the States assenting to this law;" whereby, as the petitioners insisted, all the property owned by the said A. & E. Railroad Company was forever exempted from all taxes, assessments and burthen. The petition also states that the Company's property was assessed for taxation; that such assessment is in violation of its charter-exemption, and prays that the same may be taken from the books of assessment, &c.

The County Commissioners filed their answer (record 4,) admitting all the allegations in the petition, except that by the terms of the 5th section of the Charter, the exemption of stock mentioned in the 18th section of the Charter of the B. & O. R. R. Co. is incorporated into that of the petitioners, and except, also, that the exemption of stock mentioned in the 18th section of the Charter of the B. & O. R. R. Co. is an exemption of the property of the corporation; both which pretentions on the part of the petitioners they deny.

On the 19th July, 1877, the case was heard and an order passed directing the County Commissioners to strike the property from the books of assessment, (record 3.) From this order the Commissioners appealed to the Court of Appeals, by which tribunal the order was reversed and the petition dismissed. For the opinion see Record 6, 7, 8, 9, 10. And from that judgment the Railroad Company sued out the present writ of error.

EXTRACTS FROM THE LAWS OF MARYLAND.

The sections of the Charter of the Annapolis and Elk Ridge Railroad Company, supposed to be pertinent to the questions presented by the record, and also those of the Charter of the B. & O. R. R. Co. referred to in that of the petitioner below, are here inserted or substantially stated. Also portions of the assessment laws of 1876, ch. 159 and ch. 260.

An Act to incorporate the Annapolis and Elk Ridge Railroad Company, passed 21st March, 1837, being chapter 298 of the Acts of December Session, 1836.

Sec. 1 directs that subscriptions to stock shall be taken in the same manner as is provided in the *first* section of the act incorporating the Baltimore and Ohio Railroad Company, passed December Session, 1826, ch. 123.

Sec. 2 fixes the capital at $450,000, and name of corporation.

Sec. 3. *And be it enacted*, That the mode of apportioning the stock; the amount to be paid thereon at the time of subscribing; the call for further investments; the forfeiture of stock for non-payment of installments; the election and continuing the succession of the president and directors; the mode of voting and filling vacancies; the general meeting of the stockholders and manner of calling the same, with their powers; the powers of the president and directors, with

the mode of their qualification, shall be the same as is described in the third, fourth, sixth, seventh, eighth, ninth, tenth, twelfth and thirteenth sections of the aforesaid act to incorporate the Baltimore and Ohio Railroad Company; provided that the number of directors to be voted for shall not exceed six.

Sec. 4 provides for the appointment of State directors: one for every $100,000 subscribed.

Sec. 5. *And be it enacted*, That the president and directors of the said Company shall be, and they are hereby, invested with all the rights and powers necessary to the construction and repair of a railroad from the city of Annapolis, to connect with the Baltimore and Washington railroad, not exceeding sixty feet in width, with as many sets of tracks as the said president and directors, or a majority of them, may think necessary; and for this purpose the said president and directors may have and use all the powers and privileges, and shall be subject to the same obligations, that are provided in the fourteenth, fifteenth, sixteenth, seventeenth, eighteenth, nineteeth, twentieth, twenty-first, twenty-second and twenty-third sections of the aforesaid act, entitled An Act to incorporate the Baltimore and Ohio Railroad Company.

Sec. 6 provides for charging tolls.

Sec. 7 authorizes the corporation of Annapolis to subscribe to the stock.

Sec. 8 directs the Treasurer of the State to subscribe to the stock not exceeding $300,000, on the condition mentioned.

Sec. 9. *And be it enacted*, That before any subscription shall be made on the part of the State to the capital stock aforesaid, the said Company, by its president and directors, shall enter into a covenant with the State of Maryland, under the corporate seal of the said Company, to pay the said State, semi-annually, out of the profits of the Company, a sum equal in amount to the sum of six per centum per annum on the subscription which shall be made on the part of the State under the provisions of this act, which said payments shall continue to be made until the clear annual profits of the Company shall be adequate to a dividend of six per centum per annum amongst all the stockholders; and, therefore, the State, in reference to its stock subscribed, shall be entitled to have and receive a proportional dividend upon the profits of the work as declared from time to time; provided, however, that no such payment shall be made until the expiration of twelve months after the completion of the work.

Sec. 10 and last directs out of what fund the State's subscription is to be paid, and in the same proportions with other stockholders, and requires certain certificates from the Attorney General before any payment is made by the State.

The sections of the B. & O. R. R. Charter mentioned in the Annapolis Charter are as follows:

3 *And be it enacted*, That if more than fifteen thousand shares shall be subscribed to the capital stock of said company, not reserved to the State of Maryland, or to the city of Baltimore, the said commissioners, or a majority of them, shall reduce the subscription to fifteen thousand shares, by striking off from the largest number of shares in succession, until the subscriptions are reduced to fifteen

thousand shares, or all the subscriptions to one share; and if there be still an excess, then lots shall be drawn by the commissioners to determine who are to be excluded.

4. *And be it enacted*, That upon every such subscription, there shall be paid at the time of subscribing to the said commissioners, or to their agents, appointed to receive such subscriptions, the sum of one dollar on every share subscribed, and the residue thereof shall be paid in such installments, and at such times, as it may be required by the president and directors of said company; *Provided*, that not more than one-third of the subscription be demanded in any one year from the commencement of the work, nor any payment demanded until at least sixty days public notice of such demand shall have been given by the said president and directors; and if any subscriber shall fail or neglect to pay any installment, or part of said subscription, thus demanded, for the space of sixty days next after the time the same shall be due and payable, the stock, on which it is demanded, shall be forfeited to the company, and may be sold by the said president and directors for the benefit of the company; but the president and directors may remit any such forfeiture on such terms as they shall deem proper.

6. *And be it enacted*, That at the expiration of the ten days for which the books are first opened, if ten thousand shares of said capital stock shall have been subscribed, or if not, as soon thereafter as the same shall be subscribed, if within one year after the first opening of the books, the said commissioners, or a majority of them, shall call a general meeting of the subscribers, at such time and place as they may appoint, and shall give at least twenty days public notice thereof; and at such meeting the said commissioners shall lay the subscription books before the subscribers then and there present, and thereupon the said subscribers, or a majority of them, shall elect twelve directors, by ballot, to manage the affairs of said company; and these twelve directors, or a majority of them, shall have the power of electing a president of said company, either from among the directors, or others, and of allowing him such compensation for his services as they may deem proper; and that in said election, and all other occasions wherein a vote of the stockholders of said company is to be taken, each stockholder shall be allowed one vote for every share owned by it, him or her, and every stockholder may depute any other person to vote and act for it, him or her, as its, his or her proxy, and the commissioner aforesaid, or any three or more of them, shall be judges of the said first election of directors.

7. *And be it enacted*, That to continue the succession of the president and directors of said company, twelve directors shall be chosen annually, on the second Monday of October in every year, in the city of Baltimore, by the stockholders of said company, and that the State of Maryland, and the city of Baltimore, may each appoint one additional director of said company for every twenty-five hundred shares of stock of said company by them respectively owned at the time of such election, but shall not be permitted to vote upon their stock in the election of the directors by the stockholders, in general meeting; and that the directors of said company, or a majority of them, shall have power to appoint judges of all elections, and to elect

a president of said company, either from amongst the directors, or others, and to allow him such compensation for his services as they may deem proper; and if any vacancy shall occur by death, resignation, or refusal to act, of any president or director, before the year for which he was elected has expired, a person to fill such vacant place, for the residue of the year, may be appointed by the president and directors of said company, or a majority of them; and that the president and directors of the company shall hold and exercise their offices until a new election of president and directors; and that all elections which are by this act, or the by-laws of said company, to be made on a particular day, or at a particular time, if not made on such day, or at such time, may be made at any time within thirty days thereafter.

8. *And be it enacted*, That a general meeting of the stockholders of said company shall be held annually, at the time and place appointed for the election of the president and directors of said company; that they may be called at any time during the interval between said annual meetings by the president and directors, or a majority of them, or by the stockholders owning at least one-fourth of the whole stock subscribed, upon giving thirty days public notice of the time and place of holding the same; and when any such meetings are called by the stockholders, such notice shall specify the particular object of the call; and if at any such called meetings a majority (in value) of the stockholders of said company are not present, in person or by proxy, such meetings shall be adjourned from day to day, without transacting any business, for any time not exceeding three days, and if within said three days, stockholders having a majority (in value) of the stock subscribed do not thus attend, such meeting shall be dissolved.

9. *And be it enacted*, That at the regular annual meetings of the stockholders of said company, it shall be the duty of the president and directors, in office for the preceding year, to exhibit a clear and distinct statement of the affairs of the company; that at any called meetings of the stockholders, a majority of those present may require similar statements from the president and directors, whose duty it shall be to furnish them when thus required, and that at all general meetings of the stockholders, a majority (in value) of all the stockholders in said company, may remove from office any president, or any of the directors of said company, and may appoint others in their stead.

10. *And be it enacted*, That every president and director of said company, before he acts as such, shall swear, or affirm, as the case may be, that he will well and truly discharge the duties of his said office, to the best of his skill and judgment.

12. *And be it enacted*, That the said president and directors, or a majority of them, may appoint all such officers, engineers, agents or servants whatsoever, as they may deem necessary for the transaction of the business of the company, and may remove any of them at their pleasure; that they, or a majority of them, shall have power to determine, by contract, the compensation of all the engineers, officers, agents or servants, in the employ of said company, and to determine by their by-laws, the manner of adjusting and settling all accounts against the company, and also the manner and evidence of transfers

of stock in said company; and that they, or a majority of them, shall have power to pass all by-laws, which they may deem necessary or proper for exercising all the powers vested in the company hereby incorporated, and for carrying the objects of this act into effect; *Provided only*, that such by-laws shall not be contrary to the laws of the United States, or the laws of any of the States assenting to this act, or any of the provisions of this act.

13. *And be it enacted*, That if the capital stock of said company shall be deemed insufficient for the purposes of this act, it shall and may be lawful for the president and directors of said company, or a majority of them, from time to time, to increase the said capital stock by the addition of as many shares as they may deem necessary, for which they may at their option cause subscriptions to be received in the manner prescribed by them, or may sell the same for the benefit of the company, for any sum not under their par value; and that they, or a majority of them, shall have power to borrow money for the objects of this act, to issue certificates or other evidences of such loans, and to pledge the property of the company for the payment of the same, and its interest.

14. *And be it enacted*, That the president and directors of said company shall be and they are hereby invested with all the rights and powers necessary to the construction and repair of a rail road from the city of Baltimore, to some suitable point on the Ohio river, to be by them determined, not exceeding sixty-six feet wide, with as many sets of tracts as the said president and directors, or a majority of them, may deem necessary, and they, or a majority of them, may cause to be made, or contract with others for making, said rail road, or any part of it; and they, their agents, or those with whom they may contract for making any part of the same, or their agents, may enter upon and use, and excavate any land which may be wanted for the site of said road, or the erection of warehouses, or other works necessary to said road, or for any other purpose necessary or useful in the construction or repair of said road, or its works, and that they may build bridges, may fix scales and weights, may lay rails, may take and use any earth, timber, gravel, stone, or other materials, which may be wanted for the construction or repair of any part of said road, or any of its works; and may make and construct all works whatsoever, which may be necessary and expedient, in order to the proper completion of said road; and that they, or a majority of them, may make, or cause to be made, lateral rail roads, in any direction whatsoever, in connexion with said rail road from the city of Baltimore to the Ohio river, and in the construction of the same, or their works, shall have, possess, and may exercise, all the rights and powers hereby given to them in order to the construction or repair of the said rail road from the city of Baltimore to the Ohio river.

15. *And be it enacted*, That the president and directors of said company, or a majority of them, or any person or persons authorized by a majority of them, may agree with the owner or owners of any land, earth, timber, gravel, stone, or other materials, or any improvements which may be wanted for the construction or repair of any of said roads, or of any of their works, for the purchase or use and occupation of the same, and if they cannot agree, or if the owner or owners,

or any of them, be a *feme covert*, under age, *non compos mentis*, or out of the county in which the property wanted may lie, when such land or materials shall be wanted, application may be made to any justice of the peace of such county, who shall thereupon issue his warrant, under hand and seal, directed to the sheriff of said county, requiring him to summon a jury of twenty inhabitants of said county, not related nor in anywise interested, to meet on the land, or near to the other property or materials to be valued, on a day named in said warrant, not less than ten nor more than twenty days after the issuing of the same, and if at said t me and place any of said jurors summoned do not attend, the said sheriff shall immediately summon as many jurors, as may be necessary with the jurors in attendance, to furnish a panel of twenty jurors in attendance, and from them each party, or its, his, her, or their agent, if either be not present in person or by agent, the sheriff for him, her, it or them, may strike off four jurors, and the remaining twelve shall act as the jury of inquest of damages; and before they act as such, the said sheriff shall administer to each of them on oath, or affirmation, as the case may be, that he will justly and impartially value the damages which the owner or owners will sustain by the use or occupation of the same required by the company; and the jury in estimating such damages shall take into the estimate the benefit resulting to the said owner or owners from conducting such rail road through, along or near, to the property of said owner or owners, but only in extinguishment of the claim for damages; and the said jury shall reduce their inquisition to writing, and shall sign and seal the same, and it shall then be returned by said sheriff to the clerk or prothonotary of his county, as the case may be, and by such clerk or prothonotary, filed in his court, and shall be confirmed by said court at i s next session, if no sufficient cause to the contrary be shewn; and when confirmed, shall be recorded by said clerk or prothonotary, at the expense of said company, but if set aside, the said court may direct another inquisition to be taken in the manner above prescribed; and such inquisition shall describe the property taken, or the bounds of the land condemned, and the quantity or duration of the interest in the same, valued for the company, and such valuation, when paid or tendered to the owner or owners of said property, or his, her, or their legal representatives, shall entitle the said company to the estate and interest in the same thus valued, as fully as if it had been conveyed by the owner or owners of the same; and the valuation, if not received when tendered, may at any time thereafter be received from the company, without costs, by the said owner or owners, or his, her, or their legal representative or representatives.

16. *And be it enacted*, That wherever, in the construction of said road or roads, it shall be necessary to cross or intersect any established road or way, it shall be the duty of the president and directors of said company so to construct the said road across such established road or way, as not to impede the passage or transportation of persons or property along the same; or where it shall be necessary to pass through the land of any individual, it shall also be their duty to provide for such individual proper wagon-ways across said road or roads, from one part of his land to the other.

17. *And be it enacted*, That whensoever it shall be necessary for said company to have, use or occupy, any lands, materials, or other property, in order to the construction or repair of any part of said road or roads, or their works or necessary buildings, the president and directors of said company, or their agents, or those contracting with them for making or repairing the same, may immediately take and use the same, (they having first caused the property wanted to be viewed by a jury, formed in the manner herein before prescribed,) in those cases where the property is to be changed or altered by admixture with other substances before such alteration is made, and that it shall not be necessary, after such view, in order to the use or occupation of the same, to wait the issue of the proceedings upon such view; and the inquest of the jury, after confirmation and after payment or tender of the valuation, shall be a bar to all actions for taking or using such property, whether commenced before or after such confirmation, or the payment of said valuation.

18. *And be it enacted*, That the said president and directors, or a majority of them, shall have power to purchase, with the funds of said company, and place on, any rail road constructed by them under this act, all machines, wagons, vehicles, or carriages of any description whatsoever, which they may deem necessary or proper for the purposes of transportation on said road, and they shall have power to charge for tolls upon (and the transportation of persons,) goods, produce, merchandise, or property of any kind whatsoever, transported by them along said rail way from the city of Baltimore to the Ohio river, any sum not exceeding the following rates, viz. On all goods, produce, merchandize, or property of any description whatsoever, transported by them from west to east, not exceeding one cent a ton per mile for toll, and three cents a ton per mile for transportation; on all goods, produce, merchandize, or property of any description whatsoever, transported by them from east to west, not exceeding three cents a ton per mile for tolls, and three cents a ton per mile for transportation, and for the transportation of passengers not exceeding three cents per mile for each passenger; and it shall not be lawful for any other company, or any person or persons whatsoever, to travel upon or use any of the roads of said company, or to transport persons, merchandize, produce, or property of any description whatsoever, along said roads, or any of them, without the license or permission of the president and directors of said company; and that the said road or roads, with all their works, improvements and profits, and all the machinery of transportation used on said road, are hereby vested in the said company, incorporated by this act, and their successors, forever; and the shares of the capital stock of the said company shall be deemed and considered personal estate, and shall be exempt from the imposition of any tax or burthen by the states assenting to this law.

19. *And be it enacted*, That the said president and directors shall annually, or semi-annually, declare and make such dividend as they may deem proper, of the nett profits arising from the resources of the said company, after deducting the necessary current and probable contingent expenses; and that they shall divide the same amongst the proprietors of the stock of said company, in proper proportions to their respective shares.

20. *And be it enacted*, That if any person or persons shall wilfully, by any means whatsoever, injure, impair or destroy, any part of any rail road, constructed by said company under this act, or any of their necessary works, buildings, carriages, vehicles or machines, of said company, such person or persons, so offending, shall, each of them, every such offence, forfeit and pay to the said company the sum of five hundred dollars, which may be recovered in the name of said company, by an action of debt, in the county court of the county wherein the offence shall be committed, and shall also be subject to indictment in said court, and upon conviction of such offence, shall be punished by fine and imprisonment, in the discretion of the court.

21. *And be it enacted*, That as soon as this act shall have been passed by the legislature of Maryland, books may be opened, subscriptions received, and the said company organized, and that when organized the said company, and the president and directors of the same, shall have all the powers, rights and privileges, granted by this act, and shall be subject to all its regulations in constructing or repairing any of the said rail roads or other necessary works or buildings which may or can be constructed within the limits of the state of Maryland, and in transporting persons, goods, merchandize, or property of any description, along any of said roads, and that the provisions of this act shall be wholly in force, as to all the property of the company, which may be situated or may be within the state of Maryland, and which said company is permitted to hold under this act.

22. *And be it enacted*, That if said road shall not be commenced in two years from the passage of this act, and shall not be finished within this state in ten years from the time of the commencement thereof, then this act shall be null and void.

23. *And be it enacted*, That full right and privilege is hereby reserved to the citizens of this state, or any company hereafter to be incorporated under the authority of this state, to connect with the road hereby provided for, any other rail road leading from the main rout to any part or parts of this state, provided that in forming such connection no injury shall be done to the works of the company hereby incorporated.

The sections of the Acts of 1876, chapter 159-260, supposed to be pertinent to this case, are as follows:

1876, *chapter* 159, *approved March* 27, 1876.—An Act to provide for the assessment and taxation of the property of railroad companies in this State for county and municipal purposes, and to repeal all laws or parts of laws inconsistent with the provisions of this Act.

Sec. 1. *Be it enacted*, That the property, real and personal, of each and every railroad company in this State working their roads by steam shall be assessed and taxed, for county and municipal purposes, in the same manner as the property of individuals is now assessed and taxed, and the authorities of the several counties and the city of Baltimore are hereby authorized and directed to proceed to assess and collect taxes on said property in the same manner as upon like property of individuals now assessed and taxed, or liable to assessment or taxation by the laws of this State; provided, that no

extra assessment shall be made on bridges and tunnels on the said railroad; but they shall be assessed at the same rates with the railroads.

1876, *chapter* 260, *approved 7th April*, 1876.—An Act to provide for the general valuation and assessment of property in this State.

Approved April 7, 1876.

Sec. 1. *Be it enacted*, That all interests, shares or proportions in all ships, &c., * * * all shares of stock, or shares in any bank, or in any company or corporation, * * * and all property of every kind, nature and description within the State, shall be liable to assessment and taxation, except as provided in the next ensuing section of this Act.

Sec. 2. *And be it enacted*, That the following property is expressly exempted from State, county or municipal taxation: property belonging to the United States or to this State. * * * * * [Here follows a list of other exemptions.] All other property in this State of every kind, nature and description whatever, shall be liable to valuation, assessment and taxation, and all acts or parts of acts exempting any other property except that exempted by this act from valuation, assessment or taxation for State, county or municipal purposes, which can be repealed by this General Assembly are, to the extent of such exemption, whenever or however the same has been heretofore granted, hereby expressly declared to be repealed to the extent of said exemption as aforesaid, and to be hereafter of no force or effect in granting such exemption.

Sec. 28 provides for correcting errors in the assessment by application to the Circuit Court, and for appeal to the Court of Appeals, in the manner provided in this case. As no question arises on this part of the law, further reference to it is omitted.

ASSIGNMENT OF ERRORS.

1. The nineteen sections of the Charter of the Baltimore and Ohio Railroad Company mentioned in that of the plaintiff in error became and constitute parts of the Charter of the Annapolis and Elk Ridge Railroad Company.

2. The State, by granting the charter, entered into a covenant with the plaintiff in error, and thereby surrendered its power of taxation over its property, and afforded good ground for the claim of exemption made by the plaintiff.

3. There was error in deciding that it was only those powers and privileges which were necessary, and which the president and directors could hold and use for the construction and repair of the road, that were intended to be granted, and which were defined by reference to the sections of the act incorporating the Baltimore and Ohio Railroad Company.

4. All the powers, rights and privileges granted by the sections referred to, were intended to be conferred upon the plaintiff in error, by the reference to those sections.

5. It was intended by the grant of powers, rights and privileges to the president and directors to invest the company with all the

property as set forth in the 18th section, and the same was done by the 21st section of the Act of 1826, ch. 123.

6. The grant of exemption from taxation was one of the privileges necessary and appropriate to enable the president and directors to construct and repair the road.

7. The grant of exemption from taxation was not intended merely for the purpose of constructing and repairing the road, but was intended for all and every purpose for which such a privilege could be used or applied by the Company, and in any manner that such privilege could enure to its benefit.

8. The property mentioned in the petition, filed in the Circuit Court of Anne Arundel County, and which was ordered [illegible] stricken from the lists of assessment and valuation by the said [illegible] not legally subject to such assessment and valuation.

9. The Court of Appeals erred in [illegible] the order Court from which the appeal was taken, and in dismissing [illegible] tion of the plaintiff in error.

10. The Acts of 1876, chapters 159 and 260, in so far as they were intended, or are invoked, to affect the plaintiff in error, or its property, are laws impairing the obligation of the contract between the State of Maryland and the said corporation, by reason of its said charter, and are unconstitutional; and all proceedings under authority thereof, for the purpose of taxing its property, are in violation of the said contract, and null and void.

11. The repealing section in the said Acts of Assembly last mentioned have no effect on the charter of the plaintiff in error, because they impair the obligation of the contract under which the exemption in this case is claimed.

ARGUMENT.

I.

We admit that exemption from taxation cannot be founded on mere presumption. There is no law for any such claim. The taxing powers must appear to have been relinquished, but we say that was done in this instance as hereafter shown; if it was not, there is an end to the case.

II.

It is manifest that all the sections of the law, incorporating the B. & O. R. R. Company, referred to in the charter of the plaintiff, were intended to be incorporated into and made parts of its charter. If not so, why were they mentioned at all? Without them the A. & E. R. Co. had no grant of authority to make the road, for these sections contain the only powers and prescribe the only means and in-

strumentalities of which any railroad company can be formed, or any railroad constructed. It is only necessary to read sections 3, 4, 6, 7, 8, 9, 10, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23 of the Act of 1826, ch. 123, to see how absolutely necessary the powers hereby granted to the B. & O. Company were to enable it to make that road, all of which sections are referred to in the Act of 1836, ch. 298. If these *nineteen* sections had been left out of the Act of 1826, the remaining *four* would have been a charter only in name, and the road to the Ohio river could not have been made; and if the plaintiff had been denied the use of the same powers, rights and privileges, its charter would have been equally unavailing for the purpose for which the Act of 1836 was passed. It is plain, upon the words of the charter, that the Legislature intended to incorporate a company to make a road from Annapolis, to connect with the Baltimore and Washington road, after the manner provided for the B. & O. Company, as far as the same might be applicable. If it had been declared in the law that these *nineteen* sections should be incorporated into, or be considered as portions of, the charter, there could have been no question on the subject. Now, if the language employed does not mean the same thing, what does it mean? For what purpose was it used by the Legislature if not to enable the Company, by exercising the powers and availing of the rights and privileges mentioned in these quoted sections, to accomplish the very thing the State had in view in granting the charter? But this question has been settled by authority. In P., W. & B. R. Co. *vs.* State, 10 Howard 376, it was held that where the charter of a company contained an exemption clause and was afterwards, by Act of Assembly, united with another, and the act of union secured to the united company the property rights and privileges which had belonged to either under other laws, the original exemption was extended to the new company to the extent it had before existed. And the same was expressly decided in Humphrey *vs.* Pegnes, 16 Wallace 244, where "all the powers, rights and privileges" secured by charter to one company, were afterwards conferred to another; the exemption from taxation granted to the first was extended to the other as embraced by the word privilege. Hence, we say that the Act of 1836 is to be read in connection with these nineteen sections as if they had actually been incorporated therein, instead of being referred to as parts of another charter.

We are now considering what constitutes the charter of the plaintiff, in order to meet a point made in argument below, and also in the answer of the defendants. What interpretation ought to be placed on the whole or any part when so considered is quite another matter.

III.

The plaintiff contended that the reference in the 5th section of its charter to these sections in the B. & O. Charter gave to it the full benefit of all the powers and privileges thereby granted to the other company, including exemption from taxation as provided in the 18th

section, even if there was no other part of these sections that secured such exemption; but, according to the opinion of the Court of Appeals, the company could have exercised no powers or privileges possessed by the B. & O. Company that were not necessary to construct and keep its road in repair, because, by the 5th section of its charter, the Company was to have and use them only "*for this purpose.*" This appears to be a very narrow construction, in view of the purpose for which the charter was granted, namely—the making and operating a railroad; not to mention the fact that the State herself was to become a stockholder to the extent of two-thirds of the whole capital authorized to be subscribed, and did subscribe six-sevenths, the whole capital subscribed being $350,000.00. It is not a grant to a merely private corporation in which the public had no interest, but the State was enlisted in the work to a much greater extent in proportion to the capital of the Company than ever before or since. Every intendment ought to be made in favor of the Company, in view of the State's connection with it and the interest of the public in the contemplated improvement, when we are ascertaining what powers and privileges were granted. Charters of this kind are considered as *quasi* public grants, in which the people have an interest, and are liberally construed in order to effect the end in view. This is the doctrine held in Maryland.

6 *Gill*, 289, *Mayor, &c* vs. *Balto. & O. R. R. Co.*
State vs. *Balto. & O. R. R.* 48 *Md* 70.
21 *Md.* 91, *Mayor, &c.* vs. *B. & O. R. R. Co.*

This rule is pre-eminently applicable where the State herself, on the face of the charter, is made as it were her own grantee. The court appears to have relied chiefly on the *fifth* section, and to have decided the case according *to the purpose there* indicated, as if that was the only purpose of the charter, to wit, making and repairing the road. But when we talk of a railroad something more is meant than mere construction. This limited view would deny to the plaintiff all benefit of portions of the B. & O. Charter quite as necessary to a railroad company as the power to make and repair its road. Under the powers granted in sections 14, 15, 16, 17, the Company had power to make a road, provided this limited construction did not deny to it the right to buy and condemn land, and do other indispensable acts; but where would it find the power to build depots, shops, water stations and warehouses, or to purchase and own cars, rolling stock, machinery and other requisites to operate the road? Certainly no one will say that the mere right to make and repair a road includes these rights, unless it be claimed that one is the necessary consequence of, or incident to, the other. The Legislature, however, thought it necessary expressly to give the right to the B. & O. Company in the 18th section, and not leave it to inference. If the plaintiff is to be held strictly to the use of such powers only as are necessary to construct and repair, why should there be a relaxation of this rigid interpretation for any purpose? According to this reasoning, unless the doctrine of implied powers is invoked, the plaintiff could

have or use none of these powers, because they are not necessary to construction and repair. The Company might construct and keep its road in repair with no power or means to work it. Of course the Legislature meant no such thing, but intended the 18th section, which does not relate to making and repairing the road, but does provide other necessary requisites, should be part of the charter; and if in the charter for these purposes it is in for all other, including the exemption.

Section 20 is important in affording protection to the corporate property. Section 21 gives to the *Company*, as well as the president and directors, the most comprehensive rights and powers. Both of these would be excluded, or the rights and powers therein referred to or mentioned denied to the Company. Sections 18 and 19, as to tolls and dividends, would be excluded, when they ought to be retained, and considered in connection with the 6th and 9th sections of the Act of 1836, as far as the *four* sections can be regarded as in *pari materia*. These instances serve to show that the Legislature could not have intended that these sections, though embraced in the charter, should be considered as only conferring powers necessary and appropriate for making and repairing the road.

The Court of Appeals does not give effect to the language and plain meaning of the 5th section, but by inference the conclusion is arrived at that the Legislature could not have intended all that they expressed. By it the president and directors are "invested with all the rights and powers necessary to the construction and repair of a railroad." The Legislature then determining what was necessary for this purpose, declared they "may have and use all the powers and privileges, &c., &c." If the Legislature thought it necessary or proper to confer on this Company or its officers *all* the powers and privileges provided in the quoted sections, merely for the purpose of making the road, (conceding what we do not admit that that was the extent of the grant), were they not the proper judges and had they not the right to do so? The meaning of "necessary" in such a connection, and the proper department to judge of it, are decided in McCulloh vs. Maryland, 4 Wheaton 316. They did not say that, of all the powers and privileges provided in these sections, the Company should have and use only those that were necessary to make and repair the road, leaving what might be necessary an open question, but they granted *all* these powers and privileges, whatever they were. Now, if the grant is to be limited so as to allow the Company to have and use only such as the court may think, and not such as the Legislature determined were necessary for the purposes of the charter, it will be depriving the Company, by construction or by the court's opinion as to what is necessary and appropriate, of that which is plainly expressed in the charter. If at the end of the 5th section, or anywhere in the act, there had been inserted the words of exemption embraced in the 18th section, no one would have thought of rejecting them on any inquiry as to necessity or appropriateness. If they are practically inserted by reference, where is the difference? Even for construction and repairs nothing could be more necessary than subscriptions to the stock, and any privilege that might induce people to take the stock should be regarded as among the most valu-

able to the Company, and none more so than entire exemption from taxation. 16 Wallace, 244. Hence, we say that the clause of exemption is within the words, the intent and spirit of the charter, as a means, necessary and appropriate, whereby its purpose was to be accomplished.

IV.

A point was made that these powers and privileges now claimed were given to the president and directors, and not to the company. This ought to make no difference. The corporate name is the Annapolis and Elk Ridge Railroad Company, but all the powers are to be exercised by the president and directors. Every corporation acts by its officers and agents, because it can act in no other way. If the powers had been given to the company, it might have been ~~entertained~~ contended, with as much reason, that they could not be exercised because proper instrumentalities had not been named, and the corporation itself could not act. The Baltimore and Ohio Company has all the time been doing these very things, under grants to *its president and directors*, expressed in the very same language, without being once challenged, on that account, in the many controversies which it has maintained or defended in the courts of the State and of the United States. Every survey, location, condemnation, was an act of trespass; and the same may be said of most of the acts of that Company if the objection now made is well taken. Every grant of power or right or privilege to the officers of a corporation, as such, is a grant to the company. In the nature of things they must be held for the company and enure to its use. When it is provided in a charter that the president and directors shall have power to make a road, does it mean anything else than that the corporation shall have that power, to be executed through these officers? When it is said the president and directors shall have and enjoy a privilege, does it mean anything else than that the Company shall have it? This seems to be as just and reasonable as it would be unjust and unreasonable that the *obligations* provided in the quoted sections should be assumed and borne by these officers and not by the Company. What is granted to the board belongs to the Company. But, to make this plain and free from doubt, by section 18, "the road, with all its works, improvements and profits, and all the machinery of transportation used on the road, are vested in the *company* and the successors forever," as fully as was the case with the B. & O. Company under that section; and the comprehensive language of the 21st section provides that "the said *company* and the president and directors of the same shall have *all* the powers, rights and privileges granted by this Act, and shall be subject to all its *regulations in constructing and repairing* any of the said railroads or other necessary works or buildings which may or can be constructed." Here the words "constructing and repairing" are used, but not to limit the grant of powers, rights and

privileges; it is only in constructing and repairing the road that the Company and the president and directors are subjected to the regulations provided in that behalf in the charter. The grant of powers and privileges is not restricted, but in the manner of making the road the *regulations* must be observed. The narrow construction sought to be applied to the plaintiff in error, was never applied to the Baltimore and Ohio Railroad Company. On the contrary, that corporation has exercised its powers for all railroad operations of whatever kind, and have enjoyed exemption from taxation as to all its property until a recent date, when certain portions were taxed, as not necessary to be held for railroad purposes.

The meaning of the Legislature was that the *ten* sections of the Act of 1836, and these *nineteen* of the Act of 1826, should compose the charter of the plaintiff and receive such interpretation, *mutatis mutandis*, as should be necessary to carry into effect the plain purpose of making and operating a railroad to connect Annapolis with the cities of Washington and Baltimore; furnishing at the same time to the plaintiff, as a corporation, and not merely to its president and directors, the most ample means of accomplishing the work, by conferring on the *Company* the large and comprehensive powers, rights and privileges that had been granted to the B. & O. Company by these quoted sections, in addition to those granted in terms by the Act of 1836. Of course there were some provisions appropriate in a scheme for a road to the Ohio river that would not be necessary in making the one proposed, but there could be no difficulty in determining which provisions were applicable and which were not, for the latter purpose. Exemption from taxation, however, if granted to one would not, because of the difference in the roads, be denied to the other as inappropriate, if the same language appeared in both charters. If the president and directors are not intended as the Company, there was no effective corporation, because all the powers are conferred on these officers, and for no other *expressed* purpose than to construct and repair a road. No power is given in terms to the *corporation* by the Act of 1836, and, unless when the president and directors are mentioned, the Company is to be intended, and the sections referred to be adopted as in the charter, there would be no authority to construct and work the road.

V.

The purpose of the Legislature to secure to the plaintiff the full benefit of all the rights, powers and privileges granted to the B. & O. Company may be seen in the state of things existing at the time, and the greater interest the State took in this road by becoming a very large stockholder. Ten years before, she had incorporated a company—the B. & O.—to make the first great railroad projected in this country, to facilitate which enterprise and induce subscriptions to its stock, its property was exempted from taxation. See

6 Gill, 289; Mayor of Balto. vs. B. & O. R. Co., 48 Md., 73, 74. In 1827, ch. 72, the Baltimore and Susquehanna R. R. Co.—now the Northern Central—was incorporated, with the same exemption, in the same words used in the 18th section of the B. & O. charter. In 1831, ch. 296, the Delaware and Maryland R. R. Co. was incorporated, with exemption in the same words, as to the shares of stock, reserving the right to tax its fixed property. "The legislature was willing to confer every privilege and immunity which could be reasonably required and which would *tend* to the completion of the road." 6 Gill, 289. Pursuing this liberal policy, in view of the hazard and expense attending these new enterprises, when this charter was granted, the same privilege of exemption was secured, as we contend, in the manner before stated, and, as an additional means of securing railroad connection between the State Capital and Washington and Baltimore, the State authorized a subscription to the stock to an amount that would have made her owner of two-thirds of the road, if the whole had been subscribed, and by which she did become owner of six-sevenths, so that she exempted what was practically her own property. Besides this, there was a valuable consideration for the exemption. By the 9th section of the charter, the State was to receive semi-annually, out of the profits, a sum equal to six per centum on the amount the Treasurer might subscribe in her name, until the clear annual profits should be adequate to a dividend of six per centum per annum amongst all the stockholders; whereby the State became a preferred stockholder, entitled to income from her investment, no matter how the others might fare. She was to have legal interest on her money even if her associates in the enterprise got nothing. It would seem reasonable, therefore, that the projectors of the road should ask an equivalent for this preference, and expect to find compensation in being exempted from the burden of taxation, and that persons who might subscribe would have that fact in mind when they ventured their money in this new scheme. That this was the understanding by the public, the State and local authorities and the Company, is shown by the fact that no effort or attempt has ever before been made to tax this corporation, which long acquiescence is very important in determining the question we are now considering.

48 Md. R., 71.
9 Wallace, 50.

It was decided in Gordon's Case, 3 Howard, 133, that a provision in a bank charter requiring the bank to pay a *bonus* in lieu of other taxes, would protect the corporation against any other tax. The same principle was applied in Farrington's Case, 5 Otto, 679, and the cases there cited, on the basis of contract. Here there is no express stipulation not to tax on account of the special reservation of dividends on the stock of the State, but the same principle ought to apply, considering the terms of the exemption and this long acquiescence, as evidence of what the contract was understood to be.

VI.

We do not understand that exemption from taxation must always be specially expressed in words. Some of the authorities are more stringent than others. There is no rule for the interpretation of statutes which denies to the Court the right to look at the charter in all its parts and bearings, to consider its purposes, plans, powers and means for carrying it into effect, in order to ascertain the intent of the law-makers in granting and of the corporators in accepting the charter, and to determine from the whole, in connection with the state of things inducing the contract, whether the privilege claimed was granted. The purpose on the part of the Legislature to relinquish the power must plainly appear, but that may be decided in the manner and from the sources above suggested. If, therefore, the Court shall be satisfied that taking these two laws together (1826 and 1836), in connection with the surrounding circumstances, the Legislature intended to grant to this Company the benefit of the exemption before granted to the Baltimore and Ohio Company, it would violate no rule of construction so to decide. This is certainly in accordance with the most recent decision of the Court of Appeals of Maryland, in reference to this very clause of exemption in the charter of the Baltimore and Ohio Railroad Company. In 48 Maryland, 73, the Court says: "We are not dealing with abstract definitions, but with an act incorporating a railroad company, and endeavoring to ascertain how far and to what extent the Legislature *meant* to exempt the corporation from taxation. We are not bound therefore by the literal meaning of the words of the statute, but must look to the connection in which they are used, the subject-matter to which they are applied, and the motives and objects which actuated the Legislature in conferring this privilege on the Appellee. It is a sound rule of construction, we admit, that the power of taxation is never presumed to be relinquished unless the *intent* to relinquish is clearly expressed." Proceeding, then (to apply this rule to the circumstances of that Company in order to ascertain the *intent* of the Legislature), the Court decided that all its property was exempt; a result, depending not on the mere words, but on the intention to be gathered in the manner we have above suggested. In McCulloch vs. Maryland 4, Wheaton 485, this Court said there was no express provision for exempting the United States Bank from taxation ~~of~~ State authority, but the right to tax was denied from a consideration of the nature and character of the institution, and its relation to the government and constitution.

In Phila. and Wil. R. Co. vs. Maryland, 10 Howard, 376, this Court said the "taxing power of a State is never *presumed* to be relinquished unless the *intention* to relinquish is declared in clear and unambiguous terms. In the act incorporating this Company there is nothing from which such an *inference* could possibly be drawn; and standing upon this charter alone, the tax was without doubt lawfully imposed. Neither can such *inference be drawn* upon anything contained in the subsequent law by which this Company became finally consolidated with the plaintiff in error." This case shows that the question depends upon *intention*, and that such intention

may be *inferred* from the contents of the charter, or from subsequent legislation, to which sources of information, we respectfully contend, may be added what has been brought to the notice of the Court under the *fifth* head of this brief.

But we say the exemption is expressly granted to the *Company*. We assume, of course, for this part of the argument, that the 18th and 21st sections are parts of the charter. Whatever force there may be in the position, that according to the 5th section the privileges there indicated were conferred only upon the president and directors for the purpose of construction and repair. No such point can be made on the language of the 18th and 21st, for in these the Baltimore and Ohio *Company* is mentioned as the object of the grant, and all the property vested in the corporation, together with the powers, rights and privileges granted by the act, and if immunity from taxation is a privilege (for which there is authority, Phila. and Wil. R. Co. vs. Maryland, 10 Howard, 376, Humphrey vs. Pegues, 16 Wall., 244), the exemption granted by the 18th section is repeated and confirmed by the 21st. Consequently, supposing the 18th and 21st sections to be in the charter of the plaintiff, these powers, rights and privileges, with all the property, in like manner belong to it. The words "constructing and repairing" are used in the 21st section, but they have never been construed as limiting the grant of powers, rights and privileges to such purpose, for it is manifest it was not so intended, whether we regard the purpose for which the act was passed or the ~~contract~~, and the Baltimore and Ohio Company under its charter have always exercised the largest powers. The intention and effect of this section were to confirm and assure to that Company and its officers, for all the purposes of the charter, the most ample enjoyment of the powers, rights and privileges before granted. If this is the proper interpretation as to the Baltimore and Ohio Company, it follows that it should also apply to the plaintiff, and not be restricted, as stated in the opinion. This construction is in keeping with the understanding of both these incorporations, as shown by their conduct and acts from their organization to the present time; and, the public authorities having acquiesced, it would seem to be no longer an open question.

Context

9 Wallace, 54, Chicago vs. Sheldon.

Reference is made in the opinion (23) to the law of June 4, 1836, called the eighth million loan bill, to show that the State could not have granted this exemption without a breach of faith to those who might become her creditors under that Act, and therefore cannot be supposed to have intended it. With entire respect, we remark that the Legislature was only recognizing an obligation as to taxation, which the bill of rights had already imposed, and did not intend to limit or part with, or bind any future Legislature, not to exercise the right of discrimination in laying taxes for the support of government. From 1876, when this bill of rights was declared, down to 1836, there had been passed many laws exempting property from taxation, some of which are mentioned in 12 Gill and Johns, 142. There has not been an assessment law passed in which exemptions were not allowed, and only five years later, to wit, in 1841, when a general assessment and tax law was passed, to pay interest on the

very debts created by the eighth million loan bill, discriminations by way of exemption were made; 12 Gill and Johns, 119; and in every law of that kind since, and even in the very Act of 1876, ch. 260, under which this Company is sought to be taxed, there are numerous exemptions, the list of which was greatly enlarged by the Act of 1878, ch. 413. This legislation serves to show the interpretation put by the State on the 15th section of the eighth million loan bill of 1836, and no effort has been made in any quarter to enforce this supposed pledge.

VII.

Having shown, as we think, that the clause of exemption in the 18th section of the B. and O. charter was intended and does operate for the benefit and immunity of the plaintiff in error, we proceed to consider its meaning, scope and effect. It declares "the shares of the capital stock of the said Company shall be deemed and considered personal estate, and shall be exempt from the imposition of any tax or burthen of the States assenting to this law." We are not unmindful that in Farmington *vs.* Tennessee, 5 Otto, 679, this Honorable Court has announced doctrines upon the subject of taxation, apparently at variance with the claim to exemption now asserted in behalf of the plaintiff in error; but it is respectfully suggested that this case, by reason of its peculiar circumstances, is not embraced by these doctrines, and that the present claim can be recognized and allowed, and the ruling of the Court of Appeals reversed, without doing violence to them.

In determining the construction and effect to be given to this clause of exemption, the court are not restricted to the words employed. They may look beyond these, and outside the law itself. Charters of this kind being contracts between the State and the corporators for public purposes, are more liberally considered than such acts of incorporation as are designed merely for private or personal advantage. This principle of construction as to such charters applies as well to privileges and exemptions as to other provisisions of the contract, and, as we are now dealing with a Maryland charter contract, the principle of construction established in this State ought to prevail. This rule was announced more than thirty years ago in the case already referred to, 6 Gill, 289, as it had been recognized and acted upon in 12 Gill & Johns, 117, as early as 1841; by which decisions all the property of two great railroad companies—the B. & O., and the Baltimore & Susquehanna—was declared to be exempt from taxation, because, among other reasons, as the court said, "the Legislature was willing to confer every privilege and immunity which could reasonably be required and which would *tend* to the completion of the road." And as lately as the year 1878, the same court (48 Md. 73, 74) has reaffirmed the doctrine; in a case in which the State sought to tax all the property of the B. & O. R. Company, where speaking of the case in 6 Gill in

which it had been decided that this clause exempted all the property of the Company, the court, at page 71, said: "This decision was made in a case in which the Baltimore and Ohio Railroad Company was a party, and upon the very section of the charter now under consideration. From that time to the present, a period of thirty years, it has been the accepted law of the State, and upon the faith of it millions of dollars have been invested in the property of this company. Every consideration, therefore, of public policy and of private right, demands that the decision of the court upon the question thus submitted to its adjudication, shall be deemed final and conclusive." This was said as to the extent and effect of this clause, but we do not understand the court, in the present case, to have disaffirmed that doctrine, but only to have denied that the exemption is part of the plaintiff's charter.

It has been decided by this Court that contracts may receive a construction according to the understanding and interpretation put upon them by the parties, as shown by their acts and conduct. In 9 Wallace, 50, Chicago vs. Sheldon, it appeared that a contract was made by a city ordinance with a city passenger railway company in 1859; when the ordinance came to be construed, in 1866—only seven years after—this rule was applied. This is a contract between the State and a corporation by legislative grant, and there seems to be no valid reasons why the same principles should not apply to both. If with the power of taxation, provided this company is not exempt, the State and her officials stood by for forty years since the road was completed and ~~repaired~~ refrained from exercising the power, during which time the company was exercising its franchises, and people taking stock and dealing with it, with knowledge that no such attempt had been made, or claim to tax set up by any public authority, and with knowledge, too, that similar attempts against the Baltimore & Ohio and the Baltimore & Susquehanna Company had failed—12 Gill & Johns., 117—does not every consideration of public policy and private right demand that the question shall be deemed finally and conclusively settled? And will not this Honorable Court feel constrained to declare that, after so many years of silence and acquiescence on the part of the State and her public officials, this company cannot now be disturbed in the enjoyment of the privilege it claims. It is not the principle of estoppel that is sought to be applied against the State or the defendants in error, but we rely upon the accepted construction of the contract between the State and this company, as demonstrated by their conduct in the matter, and upon legislative and judicial declarations as to the meaning of other charters containing the same clause of exemption; all ~~concurring~~ conceding that the stock represents the whole property of the corporations. The first, in 1841—12 Gill & Johns., 117; the second, in 1844—2 Gill, 355; next, in 1848—6 Gill, 288; and last, in 48 Md., 72. This Court, when inquiring whether the obligation of a legislative contract has been impaired by subsequent legislation, may consider how the parties have treated and dealt with it; what interpretation they have put upon it in carrying it into effect, and what has been the course of judicial and legislative construction in reference to it. In Ohio Life Insurance and Trust Company vs. Debolt, 16 Howard, 431, Chief

Judge Taney said: "Certainly a construction acted on as undisputed for nearly fifty years by every department of the Government, and supported by judicial decision, ought to be regarded as sufficient to give to the instrument a fixed and definite meaning. Contracts with the State authorities were made under it, and upon a question as to the validity of such a contract, the Court, upon the soundest principles of justice, is bound to adopt the construction it received from the State authorities at the time the contract was made." The Chief Justice was speaking of the Constitution of Ohio, but whether it be the organic law, or an Act of the Legislature, the same reason applies. Further on, however, he says: "The sound and true rule is, that if the contract, when made, was valid by the laws of the State, as then expounded by all the departments of its government, and administered in its courts of justice, its validity and obligation cannot be impaired by any subsequent Act of the Legislature of the State, or decision of its Courts, altering the construction of the law." The doctrine has been approved in 1 Wallace, 206; 16 Wallace, 690. To be sure, the corporations to which allusion has been made—the Baltimore & Ohio, and Northern Central, and Maryland & Delaware—are far more extensive and important in their interests and operations than this plaintiff in error; but that ought to make no difference in the application of legal principles. The same language employed in all ought to ~~recite~~ receive the same interpretation in each. If these views be correct, and this Court should adopt the construction of this exemption clause as it has always been understood and acted upon in Maryland, the property assessed by the proceedings under the Act of 1876 would be protected according to the principles laid down in 5 Otto, 679.

VIII.

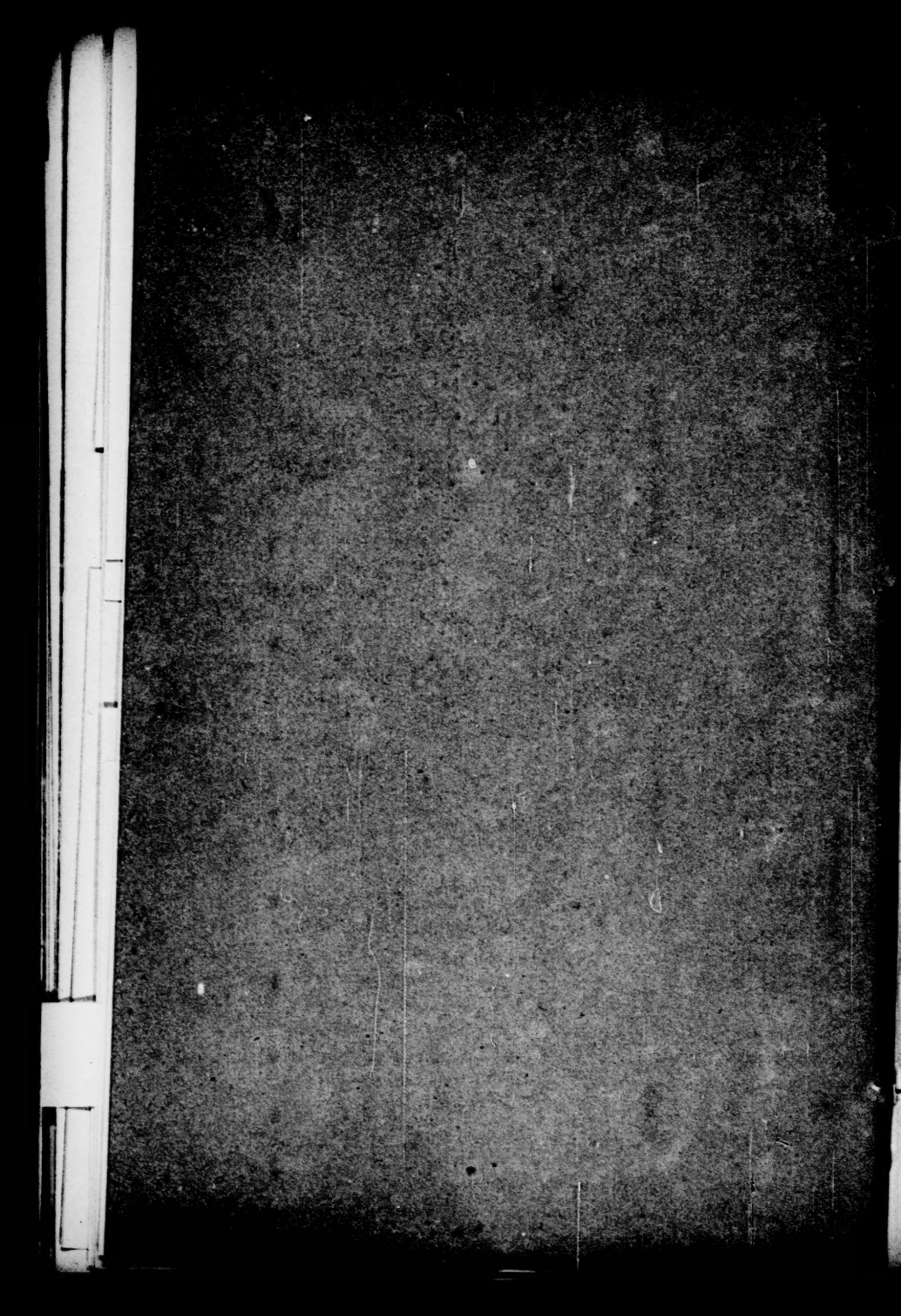
But it is further contended that the property assessed in this case is exempt from taxation by the 21st section, made part of our charter. It provides that, "when organized the said *company*, and the president and directors of the same, shall have all the powers, rights and *privileges* granted by this Act, * * * and the *provisions* of this Act shall be *wholly in force as to all the property of the company*, * * * which said company is permitted to hold under this Act." Exemption from taxation being a *privilege*, (10 Howard, 376, 16 Wallace, 244,) the 18th section being also part of the charter, and the exemption in that section being among its "*provisions*," it is "wholly in force as to *all the property* of the company." For if a privilege in one charter can, by reference, be extended to another corporation (10 Howard, 376, 16 Wall. 244), there is no reason why a privilege or exemption expressed in one section of a charter cannot, by reference, in a subsequent section of the same charter, be extended to all the property of the company. The privilege in the 18th section is not only confirmed but enlarged by the 21st. The

Court will find the opinion in 16 Wall. 244, very explicit, as to the nature and value of these exemptions to a railroad company, and as to their validity when conferred upon a corporation by reference to other charters, as in this case.

IX.

Upon the foregoing views we submit that the repealing clause in the Acts of 1876, ch. 159 and 260 have no effect on the charter of the plaintiff in error; that these acts in so far as they were intended or are invoked to affect the plaintiff in error, or its property assessed under their provisions, are laws impairing the obligation of the contract between the State and the plaintiff in error by means of the said charter, and are unconstitutional and void as against the said Company; and all said proceedings had under the same for the purpose of assessing and taxing the said property, are in violation of the said charter, and null and void; and therefore the judgment of the Court of Appeals ought to be reversed.

M. BLAIR,
W. H. TUCK,
P. H. TUCK,
For the Plaintiff in Error.



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SUPREME COURT OF THE UNITED STATES.

October Term, 1880. No. 157.

ANNAPOLIS AND ELK RIDGE RAILROAD COMPANY,
Plaintiff in Error,

vs.

THE COUNTY COMMISSIONERS OF ANNE ARUNDEL COUNTY, Defendants in Error.

Brief of the Plaintiff in Error on the Motion to Dismiss the Writ of Error.

It is respectfully insisted that the views suggested by the Attorney General of Maryland, in support of the motion, are not well taken.

The ruling of the Court of Appeals was a final judgment, within the meaning of section 709 of the Revised Statutes. Conceding that the Act of 1876, under which this case originated, does not impose any taxes, other laws of the State do, and the Acts of 1876 were intended to ascertain the property on which the taxing power, under these other laws, was to operate. This is shown by the 28th section, quoted on the Attorney General's brief, (page 3,) for the very office and duty of the Court were to *determine* whether the said property, so valued to the said owners, is or is not subject to such valuation, and to *assessment for State taxes*, &c., &c., and whether the Court was to decide one way or the other, depended on the right of exemption asserted by the plaintiff in error. It would make a very large brief to incorporate all the tax laws of the State, but the Court will conclude that the officials, whose duty it may be to levy the taxes, must needs lay them on all assessable property, or, at any rate, cannot tax any that is not on the assessment lists. The County Commissioners,

whose duty it is to lay the tax, would not exempt any property which the highest Court had adjudged to be assessable, and not entitled to exemption.

Authority is also given to the Tax Commissioner, and the Attorney General, as shown in the brief, to correct assessment lists, but can it be said that these officers would have the right to act contrary to the decision of the Court? Of course not. The very object of the appeal was to have such questions settled, and these officers, and all others, would be bound by the judgment of the Court. Their power does not extend to any such case, for it would be placing them above the power of the judicial tribunals, whose peculiar office it is to declare the law. It amounts to saying that if this Honorable Court were to decide that the railroad property was not liable to assessment, these two officials might disregard that judgment, and direct the County Commissioners not to strike it from the lists. But it will be seen, by reference to the sections of the Maryland Code, cited in the brief, and to the Act of 1878, chapter 178, that their power does not embrace such a case; and if this appeal should be dismissed, the railroad company would be without further remedy. We must not forget that this proceeding was begun under the Act of 1876, before the Act of 1878 was passed, and that the law giving the supposed new remedy, did not take away the old one.

But, we say that this case is within the words and meaning of section 709 of the Revised Statutes of the United States. The jurisdiction of this Court extends to cases "where is drawn in question the validity of a statute of, or *an authority exercised* under, any State, on the ground of their being repugnant to the Constitution, treaties or laws of the United States, and the decision is in favor of their validity." Now, the very thing complained of is that the State officers have exercised an authority under statutes of the State, (1876, chapters 159 and 260,) in prejudice of the rights of the plaintiff under its charter, and that the decision is in favor of their validity. The Court of Appeals decided that the company's property had been properly assessed, because it was not entitled to the exemption claimed. The right to the exemption was the only question raised by the pleadings, and the only point to be decided, and necessarily so, because the validity of the assessment depended on the determination of that question. And whether the authority exercised under the Assessment Laws was valid or not, also depended on the right of exemption. We set up an immunity under our charter, and said that that immunity was sought to be taken from us by proceedings

under these Assessment Laws, and we claimed the protection of the Constitution against such invasion of our corporate privileges. When the Court of Appeals "heard and determined the case," that decision was final and obligatory.

There are different modes of collecting taxes, as stated in the brief, but we think that has nothing to do with this question of jurisdiction. The law of the State provided how the validity of the assessments should be determined. We pursued that remedy, and in a case in equity, or in an action at law by the State for its taxes, the company would be concluded by a judgment rendered according to the mode provided.

The instances quoted on page 6 of the brief, do not appear to have any application here, for there was no such full remedy indicated for correcting assessments by appeal to the Court of Appeals, until the Act of 1876. The jurisdiction of Courts of Equity in such cases generally, is not questioned, but where a specific remedy in a Court of Law is provided, and not availed of, or is fruitlessly asserted, the party might be denied relief elsewhere.

The Legislature must have intended that this proceeding in the Law Courts should have some effect, but, according to the view now presented, they only added another to the existing remedies, to prevent the collection of illegal taxes, with the right of proceeding in other Courts, after having failed in those specially provided for the determination of such controversies. It is respectfully contended, that this is not a proper interpretation of the law, and that the motion to dismiss ought not to prevail.

M. BLAIR,
W. H. TUCK,
P H. TUCK,
For Plf. in Error.

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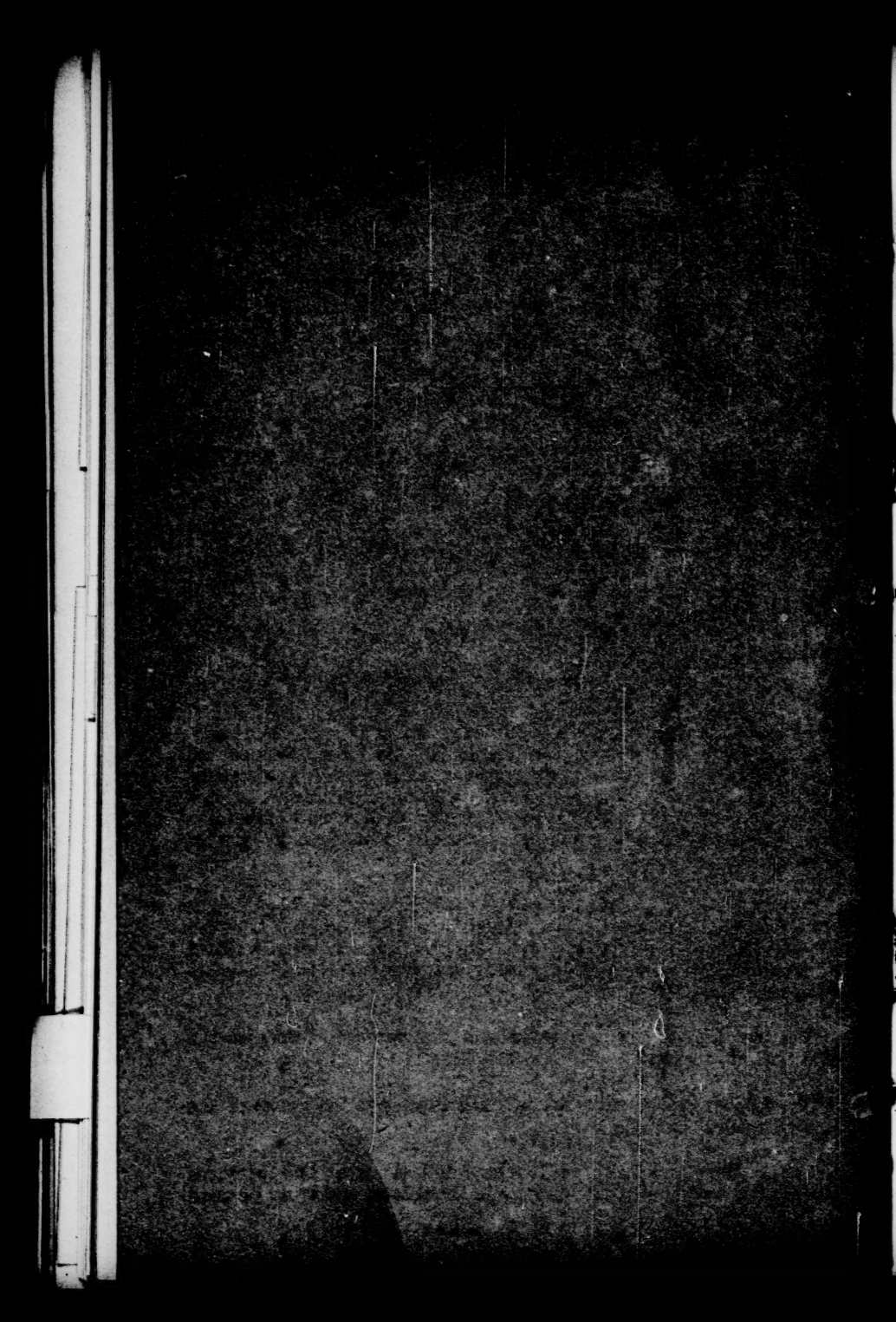
PLAINTIFF IN ERROR,
vs.
THE COUNTY COMMISSIONERS OF ANNE ARUNDEL COUNTY.

BRIEF ON THE PART OF THE DEFENDANTS IN ERROR.



IN THE SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1880, No. 157

THE ANNAPOLIS AND ELKRIDGE RAILROAD COMPANY, PLAINTIFF IN ERROR,

vs.

THE COUNTY COMMISSIONERS OF ANNE ARUNDEL COUNTY.

BRIEF ON THE PART OF THE DEFENDANTS IN ERROR.

The undersigned intervenes in this case, on the part of the defendants in error, who are political agencies of the State of Maryland for certain purposes defined by law, by direction of the Governor of the State, and moves to dismiss the writ of error, issued in this cause, for want of jurisdiction in this Court to hear and determine the subject-matter alleged by the plaintiffs in error to be now in controversy.

The jurisdiction of this Court is limited by law. It must, before giving judgment upon any writ of error, always determine whether it has jurisdiction, even though the question be not formally raised by a party to the particular proceeding. *Rhode Island* vs. *Massachusetts*, 12 Peters, 719.

It is the duty, however, of a party to the record to interpose the objection, if it exists.

The following particulars are brought plainly to the notice of the Court by the Record:

By the Maryland Act of 1876, chap. 159, the real and personal property of every railroad company in that State, operating its road

by steam, was made subject to assessment and taxation for county and municipal purposes. Record, p. 2. For terms of acts see brief of plaintiff in error, p. 9.

By the Maryland Act of 1876, chap. 260, provision was made for the general valuation and assessment of property in the said State.

The substance of the two first sections of this last Act is sufficiently set forth on page 10 of the brief of the plaintiff in error. Sections 3 to 27 of the Act, both included, prescribed the mode in which the valuations of such property should be made, and for the return of the names of each person to whom property was valued in the respective counties of Maryland and in the city of Baltimore, and the particulars of such property, to the County Commissioners of the respective counties and to the Appeal Tax Court of Baltimore City.

The Act then proceeded to make the provisions which are contained in sections 28, 29 and 30, which are not set forth in the brief of the plaintiff in error. Those provisions were as follows:

Sec. 28. *And be it enacted*, "That any owner of property, or owner "to whom property has been valued, and who shall claim that the "property so to him, or it valued, is not owned by him, *or is exempted* "*from valuation or assessment*, or any person acting in behalf of such "owner or person, or making such claim on behalf of said owner, "may file a petition in the Circuit Court for that county in which the "said property has been so valued, or in the City Court of Baltimore, "if the said property has been valued in Baltimore City, setting forth "the facts of the said case, and the grounds upon which said exemp-"tion is claimed, or denying said ownership; the said petition shall "be filed within thirty days after the return made by the Board of "Control and Review of that county, or of the City of Baltimore, "in which said property shall have been valued, to the County Com-"missioners of said county, or to the Appeal Tax Court of Baltimore "city, or within thirty days after the said property has been so "valued to the said owner, and notice given to him of such valuation.

"To said petition, the County Commissioners of the county, or the "Appeal Tax Court of Baltimore city, according to the locality in "which such valuation was made, shall be made defendants, and the "State's Attorney of the said county, or the State's Attorney of "Baltimore city, as the case may require, shall appear for the said "defendants; the said defendants shall answer the said petition "within ten days after they shall have actual notice thereof. It "shall be the duty of the said Circuit Court, or City Court of Balti-"more, to hear the said case upon petition and answer, and upon "such affidavits, if any, as the Court may authorize to be taken by "either party, on such notice as the Court may prescribe, at its then "session, or at the earliest practicable day thereafter; *and the said*

"Court shall determine whether the said property so valued to the said "owner, is or is not subject to such valuation and to assessment for "State taxes, or ought, or ought not to be valued to said owner. "If the said Court shall determine that the said property is not "subject to such valuation, or assessment, or ought not to be valued to "said owner, it shall, by its order, direct the said County Commis- "sioners, or the said Appeal Tax Court, as the case may be, to strike "the said property from the list of property valued to such owner; but "if it shall determine that the property is subject to valuation and "assessment, or to valuation to said owner, it shall so determine by its "order.

"Sec. 29. *And be it enacted,* That if it appears by the returns, "made as aforesaid to the County Commissioners of any county, or "to the Appeal Tax Court of Baltimore City, that any property not "exempted from valuation and assessment under this Act, has not "been valued to any owner in the county, or city, in which the same "ought to be so valued, it shall be the duty of the comptroller to "direct the said property to be so valued by the County Commis- "sioners of the proper county, or by the Appeal Tax Court of Balti- "more City, and to direct that said notice of said valuation shall be "given to said owner. If the County Commissioners of any county, "or if the Appeal Tax Court of Baltimore City, shall refuse to value "such property to the owner thereof, it shall be the duty of said "Comptroller to file a petition in the name of the State of Maryland "against the County Commissioners or Appeal Tax Court, as the case "may be, so refusing, in the Circuit Court of that County in which "such valuation ought to have been made, or in the City Court of "Baltimore, if the said valuation ought to have been made in said "city, and the State's Attorney of the proper county or city, shall "appear for the said State, and the said County Commissioners, or "the Appeal Tax Court, shall answer the said petition within ten "days after they shall have actual notice thereof. It shall be the "duty of the said Circuit Court, or City Court of Baltimore, to hear "the said case upon petition and answer, and upon such affidavits, if "any, as the Court may authorize to be taken by either party, on "such notice as the Court may prescribe at its then session, or at the "earliest practicable day thereafter; and the said Court shall deter- "mine whether the said property ought or not to be valued to the said "owner. If the said Court shall determine that the said property "ought not to be valued to its said owner, it shall so determine by "its order; but if it shall be determined that the said property is "subject to valuation and assessment, it shall direct the same to be "valued to the owner thereof in the assessment district in which the "same ought to be so valued."

"Sec. 30. *And be it enacted,* That either party to the proceedings "mentioned in the two preceding sections may appeal from the "order of the Court therein to the Court of Appeals; and, on such

"appeal, the clerk of the Court shall forthwith transmit the original "papers, including the order of the Court, to the Court of Appeals, "*and said Court shall immediately hear and determine the said case.*"

The meaning of this last clause is obvious. The Court of Appeals is directed, in substance, to affirm or reverse the determination of the inferior Court; and, in the event of reversal, to make such determination as such inferior Court ought to have made.

The whole purpose of the Maryland Act of 1876, chap. 260, was to secure through its provisions, an accurate list and valuation of all properties in each county of the State and in the City of Baltimore which were subject to taxation, and of the names of the respective owners of such properties.

The act itself imposed no taxes. It provided only for ascertaining the basis upon which all State and county taxes and all taxes in the City of Baltimore should be levied. It is the law of the State that all State and county taxes, and all taxes in the City of Baltimore, shall be levied upon the assessment heretofore made, and such further assessments as may be directed by law, unless otherwise directed in the Act of Assembly levying said taxes. Rev. Code 1878, Art. 11, sec. 1, p. 95.

The 28th section of the Act devised a summary method by which any person to whom property had been wrongly assessed, and who denied its ownership, might bring the matter in dispute, with his proofs, before a legal tribunal and take its opinion upon the question; and, if its opinion was favorable, he could secure a correction of the list in the particular complained of. It also devised a method by which any person, to whom property had been valued for purposes of taxation, who claimed that such property was exempted from the burden, might obtain the opinion of a legal tribunal upon that question; and if its opinion was favorable to such claim, he could secure a proper correction of the tax list.

The 29th section of the Act devised a like summary method of proceeding when the Comptroller of the State Treasury, the officer charged with the general administration of the financial affairs of the State, might consider its interests injuriously affected by the omission of the inferior valuing officers, or tribunals, to value any particular property, which, in his opinion, was subject to taxation and ought to have been valued to its owner.

The 30th section of the Act gave an opportunity to all parties, concerned in any opinion pronounced in the cases referred to in the 28th or 29th sections, to submit the opinion thus given by the legal

tribunal to which the matter in controversy was first submitted, to the consideration of the Court of Appeals, the highest court in the State, in order that it might review and determine, by its opinion, the matter of law, or fact, which had been passed upon by the inferior legal tribunal.

It would seem to be plain that the three sections last referred to, considered together, were simply provisions for the final correction of the lists of properties valued under the directions of the Act to their particular owners for purposes of future taxation under the laws of the State.

It will be observed that the lists of taxable properties, even when thus finally corrected, were not made, by any provision of the laws of the State of Maryland, *conclusive* of the taxable character of the particular properties, which had been valued. The sections referred to were simply parts of the machinery, devised to secure an approximately accurate list of persons and property chargeable with the payment of any taxes, which might be assessed thereon under existing or subsequent laws of the State, exercising its taxing power. The owners of property, who had taken the opinion of a court as to the fact of their ownership of particular property, or in relation to the exemption of particular property valued to them from taxation, did not occupy, after such opinion was given, any different position from that occupied by other persons similarly situated, who had not brought such question before a court, except that they were, perhaps, better informed as to the law applicable to their particular cases. They were, after such opinion, if it was adverse to their claim, in the position only of all others on the lists; that is to say, of persons to whom property had been duly valued according to the forms prescribed by the State law, and in whose hands such property was, *prima-facie*, subject to assessment for State, county and municipal taxes.

Under the general provisions of the Revenue Laws of the State of Maryland, the lists of taxable properties are annually revised by the County Commissioners of the respective counties, and by the Appeal Tax Court of Baltimore City. Revised Code of Md., Art. 11, secs. 12 and 13, p. 98. These tribunals are also required "at any time when so directed by the State Tax Commissioner, with the concurrence of the Attorney General, signified by his opinion in writing, to correct the assessment of the property in the respective counties and in the City of Baltimore by striking therefrom any property, which they shall be instructed by the said Tax Commissioner and Attorney General is not subject to taxation under the laws of this State, or of the United States. Maryland Act of 1878, chap. 178, sec. 150.

This was a further provision, made by law for the prompt and inexpensive revision of the tax lists.

When a levy of taxes is made in the State of Maryland, said taxes can be collected in two ways. *First.* By an action against the owner of the valued property upon his implied *assumpsit* to pay the particular charges. *Mayor and City Council of Balto. vs. Howard*, 6 H. & J. 393. *Dashiell vs. Mayor and City Council of Balto.*, 45 Md. 621. *Second.* By distress, execution, or sale of property.

There can be no question that when a person is sued in assumpsit for taxes alleged to be due by him to the state, or to any county, or to the city of Baltimore, upon property valued to him upon the lists of taxable property of said State, county or city, he may, notwithstanding such valuation, show, by way of defense to the action founded upon the implied *assumpsit*, that the particular property, charged with such taxes, is not subject thereto.

For instance. The property of the Franklin Railroad Company was duly valued for taxation by the Commissioners of Washington County, in the State of Maryland; but this circumstance did not preclude the Company, when sued for the taxes claimed to be due on such property, from setting up, as a defense, an alleged exemption from taxation, although its pretension was overruled. *County Commissioners of Washington County vs. Franklin R, R. Co.*, 34 Md., 160.

Again. The valuation of the real and personal property of the Baltimore and Ohio Railroad Company, for the purposes of taxation, did not preclude that Company from setting up a claim to exemption from taxation, by way of defence, against an action brought by the Mayor and City Council of Baltimore to recover taxes alleged to be due on such property. *Mayor and City Council of Baltimore vs. Baltimore and Ohio Railroad Company*, 6 Gill, 288.

If property, claimed to be exempted from taxation under the laws of the United States, or by the contract of a State, is nevertheless valued by State, county, or municipal authorities, under the terms of a general or particular law, applicable to the subject matter, and is levied upon under the laws of the particular State, certainly the jurisdiction of a State Court of Equity may be invoked to enjoin the sale. The jurisdiction of such Court may be maintained either upon the theory that the taxing statute, under color of which proceedings were taken against the property, can not be construed to extend to the particular property, and that the valuation of such property, for purposes of taxation, and the levy thereon were consequently void; or upon the theory that the directions of the statute were, in fact, inoperative and void as to such property, although authorized and expressed in the form of a law.

Under such circumstances a case would be presented, where "property is taxed, which is not legally liable to taxation (*State Railroad*

Tax Cases, 92 U. S. 615); and the special circumstances would bring the case within the rules of recognized Equity jurisprodence. High on Injunctions, sec. 354.

There is both reason and authority for holding that the control of the Courts over the exercise of the taxing power of municipal corporations is necessary to the proper administration of the affairs of local governments. *State Railroad Tax Cases*, 92 U. S. 615.

It would seem to be plain enough, from these observations, that the determination of the Court of Appeals of Maryland (Record, p. 10), that the property mentioned in the petition of the plaintiff in error (Record, p. 2) ought not to have been stricken from the list of taxable property for Anne Arundel county, but was, on the contrary, subject to valuation in said list, was simply *a ruling made in the course of the correction of the lists of taxable property in Anne Arundel county*, according to the method provided by law. Such determination was not "final judgment or decree," which definitively fixed the liability of the plaintiff in error for the taxes upon the particular property valued to it. The determination, when made, left the plaintiff in error at full liberty to set up, by way of defence, its claim to exemption from taxation in any proceeding instituted to enforce the collection of county taxes levied upon the basis in which its property had been included by the determination of the Court of Appeals. A determination, which had no other effect than this, was not a final judgment, or decree, in the sense of section 709 of the Revised Statutes of the United States. For although there may have been drawn in question, in such determination, the validity of an immunity, which, if it existed, was protected by the Constitution of the United States; yet such determination was not *a final judgment* within the true meaning of the law.

The Court will observe, moreover, that the particular immunity was not "*specially set up*" by the plaintiff in error in its petition, as an immunity claimed under the Constitution of the United States; Record, pp. 1 and 2.

It would seem, therefore, for all these reasons, that the determination of the Court of Appeals of Maryland, in this particular case, cannot be re-examined and reversed, or affirmed, by this Court.

If this Court should be of a contrary opinion, and should decide to take jurisdiction of this cause, the undersigned is content to submit the merits of the case to its judgment upon the opinion of the Court of Appeals contained in the Record, with but few additional observations.

It is the opinion of the State of Maryland, although it did subscribe for six-sevenths of the whole capital of the plaintiff in error,

and is still the owner of such proportion of the capital stock (Record, p. 13), that the real and personal property of the plaintiff in error is subject to county taxation by the authorities of Anne Arundel county, within whose borders such real and personal property are located.

The Maryland Act of 1836, chap. 298, incorporating the Annapolis and Elkridge Railroad Company, is not similar, in its grant of powers, to the Maryland Act of 1837, chap. 30, incorporating the Philadelphia, Wilmington and Baltimore Railroad Company. 10 Howard, 376.

No intendment can be made in favor of the plaintiff in error, because of the connection of the State of Maryland with its work, when such plaintiff is endeavoring to assert an immunity, disavowed by that State, and which the highest Court in that State has as yet refused to recognize.

It is not pretended by the plaintiff in error that any contract has been made by the State of Maryland, subsequent to the grant of the original charter of the plaintiff in error, under which any exemption from taxation can be claimed.

The intention of the General Assembly to grant to the plaintiff in error immunity from all taxation of its real, or personal property, is certainly not made clear, beyond a reasonable doubt, by the terms of the original charter of the plaintiff in error. Maryland Act of 1836, chap. 298. Brief of plaintiff in error, p. 2. The language used by the General Assembly admits of other and very different construction, as appears by the opinion of the Court of Appeals contained in the record; and the question at issue must be decided in favor of the taxing power. *Hoge vs. Railroad Co.*, 99 U. S., 555.

The plaintiff in error must depend wholly for the support of its claim to exemption from taxation, under the laws of the State of Maryland, upon the grant of powers and privileges made to it by the fifth section of its charter. Maryland Act of 1836, chap. 298, sec 5, Brief of plaintiff in Error, p. 3.

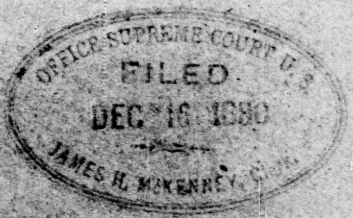
This section defined the purpose of the existence of the plaintiff in error, and, "*for this purpose*, vested in it the powers conferred upon the Baltimore and Ohio Railroad Company by the eighteenth and twenty-first sections of its charter. The plaintiff in error relies upon the provisions contained in these two sections.

But the rights and powers thus engrafted upon the charter of the plaintiff in error were limited in their use, by the terms of the fifth section of such charter, to their needful use in the construction and

repairs of the particular railroad which it was authorized to build. The grant was only of such franchises of the Baltimore and Ohio Railroad Company as were necessary for the particular purpose of constructing and repairing its railroad. The immunity of the shares of the plaintiff in error from taxation was not a franchise, or immunity, necessary for that purpose. *Railroad Co* vs. *Gaines*, 97 U, S., 711, 712. It did not, therefore, pass to the plaintiff in error.

The neglect of a State, or of any political subdivision of a State, in any year, or series of years, to enforce its rightful powers of taxation over particular property, does not operate as a contract to release such property from taxation. Under the Maryland Acts of 1876, chap. 159, and 1876, chap. 260, the property of the plaintiff in error was rightfully listed and valued for purposes of taxation.

CHARLES J. M. GWINN,
Attorney-General of Maryland,
for the Defendants in Error.



SUPREME COURT OF THE UNITED STATES.

October Term, No. 157.

THE ANNAPOLIS AND ELK RIDGE RAILROAD COMPANY, Plaintiff in Error,

vs.

THE COUNTY COMMISSIONERS OF ANNE ARUNDEL COUNTY.

IN ERROR TO THE COURT OF APPEALS OF MARYLAND.

Brief filed by Henry Asbquith, the Counsel for the Defendants in Error.

emptions to a corporation are strictly construed against the corporation, and in favor of the public. Nothing passes but what is granted in clear and explicit terms, and neither the right of taxation, nor any other power of sovereignty which the community have an interest in preserving, undiminised, will be held by the Court to be surrendered, unless the intention to surrender is manifested by words too plain to be mistaken." (16 How., 238, Debott's case.) Chief Justice Marshall, in speaking of the taxing power said: "It would seem that the relinquishment of such a power is never to be assumed. We did not say that a State may not relinquish it; that a consideration sufficiently valuable to induce a partial release, may not exist; but as a whole community is intrusted in maintaining it undimished, that community has a right to insist that its abandonment ought not to be presumed in a case in which the deliberate purpose of the State to abandon it, does not appear." (4 Pet., 561, Providence Bank vs. Billings.) This language in 4 Peters, is adopted in Maryland, and quoted in 5 Gill, 237, Gordon's Ex'r vs. Mayor, &c., of Baltimore. "When exemption is claimed, it must be shown indubitable to exist. At the outset, every presumption is against it. A well founded doubt is fatal to the claim. It is only when the terms of the concession are too explicit to admit fairly of any other construction, that the proposition can be supported." (5 Otto, 686, Farrington vs. Tennessee.) Does it not follow from these decisions, that there must be some word or words in the Act, which is read in each branch of the Legislature, which will call the attention of the legislators to the subject of taxation and of exemption? For how can it be reasonably claimed that the legislature, (and each member of it,) had, before it and considered the question of exemption in a charter, in which not one word that was read before the Legislature, mentioned either taxation or exemption? Of course it is not claimed that the 18th, and other sections of the B. & O. charter, referred to in the third and fifth sections of plaintiff's charter, were ever read as a part of said charter. And if not, in what manner was the question of the exemption of the shares of stock of the plaintiff, ever presented to and considered by the Legislature? From the knowledge that all of us have of the mode of legislating, and the impossibility of a member fully investigating and understanding each and every bill he acts upon, it is not to be presumed, for a moment, that any considerable portion of the members, much less a Constitutional majority, ever read or examined those sections of the B. & O. charter, referred to in the charter of plaintiff in error, and knew that when they were listening to and voting upon this charter, they were parting with the sovereign rights of taxation.

It is submitted that while exemption necessarily means privilege, privilege does not necessarily mean exemption.

Bearing in mind the strict rules of construction applicable to exemptions, let us examine the 5th section of the charter of plaintiff. It is as follows:

"Sec. 5. *And be it enacted*, That the president and directors of the said company shall be, and they are hereby, invested with all the rights and powers necessary to the construction and repair of a railroad from the City of Annapolis to connect with the Baltimore and Washington Railroad, not exceeding sixty feet in width, with as many tracks as the said president and directors may think necessary, and for this purpose the said president and directors may have and use all the powers and privileges, and shall be subject to the same obligations that are provided in the fourteenth, fifteenth, sixteenth, seventeenth, eighteenth, nineteenth, twentieth, twenty-first, twenty-second and twenty-third sections of the aforesaid Act, entitled An Act to incorporate the Baltimore and Ohio Railroad Company."

Necessary, not coupled with any other word to extend it, has an usual plain and defined meaning, viz: indispensable, inevitable, essential, needful, requisite. (Wor. Dic.)

The power to build and repair, necessarily carried with it the power of operating. A railroad could not need repair that was not operated.

It is scarcely necessary to remark that the sections of B. & O. charter were not bodily and literally incorporated into the plaintiffs' charter, although the plaintiffs, in their petition, "insists the said sections were incorporated into and became parts of its charter." (Record, page 1.)

Leaving out of section 5 now, for the sake of the argument, the words "necessary" and "for that purpose," which it will be afterwards contended were words of limitation, let us look simply at the latter clause: "The said president and directors may have and use all the powers and privileges." Does this language "indubitably" (5 Otto,) convey to the mind that any other power or privilege was given except that power or privilege that could be held and used by the president and directors, viz: Section 14, to build bridges, to take material, and *the power to make lateral roads*; 15, to condemn land; 16, to cross public roads; 17, to take materials for construction and repair of road; 18, to put machines, &c., on their road, &c. All these the president and directors could have and use. In what way could they have or use an exemption on shares of stock not in their possession?

Now let us look at the whole section; is it not a fair construction —almost a literal one—that the right, power or privilege conferred, must be such a one as not only "the President and Directors may have and use," but which also were *necessary* to the construction, running and repair of plaintiff's road? The language is, "all the powers and privileges, and shall be subject to the same obligations." Now it seems to us, that the only tenable ground, certainly the only strong ground for the plaintiff to stand upon, is to claim each and every power and privilege, and acknowledge each and every obligation contained in the 14th to the 23rd sections, inclusive, of the B. & O. charter, as is in fact, claimed in plaintiff's brief, (page 14,) for either one are conferred, or only some of them. If we can show that any power or privilege in said sections of the B. & O. charter were not conferred upon, or any obligation contained in said sections, not imposed upon the plaintiff, then it is plain that all the powers and privileges in said sections were not conferred and *a fortiori*, that no exemption was conferred.

In the 14th section of the B. & O. charter, among other powers, the power and privilege is given to the President and Directors of said road to "make, or cause to be made, *lateral* roads in any direction whatsoever." Here is a most important power and privilege, which increases the value of the corporate franchise, and one that the President and directors of the plaintiff could "have and use," yet it was not *necessary*, (indispensable, inevitable, essential, needful, requisite) to the construction and repair, or to the running of plaintiff's road; and not being so necessary, it was not conferred. Again by its 18th section, the B. & O. Road has the obligation placed upon it, not to exceed certain charges per ton per mile, for passengers, produce, &c. This "same obligation" is not placed upon the plaintiff, for it is provided in its charter, as follows: "Sec. 6. *And be it enacted*, That the said President and Directors shall have power in their discretion, to charge such tolls for the transportation of passengers, goods, produce, merchandize and property of any description, on their said road, as shall produce a net revenue not exceeding ten per cent. per annum, on the cost of the said A. & E. R. R. R." Could not the plaintiff claim the power and privilege to make lateral roads, with as much or more force than it can claim exemption from taxation? Yet, as was said by the Court in the opinion, "the power to make lateral roads was certainly not intended to be granted to the appellee."—(Record, page 9.)

Further, the legislation of the State, prior to the charter of plaintiff, "affords support to the conclution that the taxing power of the State was not designed to be relinquished in the grant of the appellee's (plaintiff's) charter," as is said in the Court's opinion. (Record, page 10.) Same page the Court says: "The legislation to which we refer is the Act known as the 'Eight Million Loan Bill,' passed on the 4th of June, 1836. That Act was passed to aid and promote the work of internal improvements that had been undertaken in the State, and it provided for the issue of State stock or bonds to the amount of eight millions of dollars, which the State would be bound to redeem. It was declared with a view manifestly of giving support to the credit of the State, by the 15th section of that Act, "in the language of that section, as follows: 'That in case it shall become necessary, at any time hereafter, to levy a direct tax for the support of Government, or to sustain the public credit, the same shall be laid according to the thirteenth article of the Declaration of Rights, including all goods, wares and merchandize belonging to citizens of this State, ships and vessels, in or out of port, monies at interest on mortgage, bond or chose-in-action, stock and public securities of every description, and all income derived from shares of every incorporated institution, or otherwise, as well as every other description of property, real, personal or mixed, which escapes taxation under existing laws; and the faith of the State is hereby pledged to lay the same accordingly, in consideration hereof, and to provide for the payment of interest, and the reimbursement of principal of debts to be created in virtue of this Act, or of debts which may be created at any subsequest Legislature, and all Acts or parts of Acts in contravention of the Constitutional and equitable principles herein contained, shall thenceforward be repealed, abrogated and annulled." (Act 1836, ch. 395, sec. 15.

Here then, on the 4th of June, 1836, the Legislature say, "*the faith of the State is hereby pledged*" to tax every kind and description of property. On the 7th of March, 1837, only nine months afterwards, the same Legislature, composed of the same members, passed the charter of plaintiff.

Section 2 of plaintiff's charter, fixes the value of each share at $100, and provides, that when 500 shares, (making 50.000,) are subscribed, "the subscribers and ther successors shall be, and they are hereby incorporated."

Sec. 8 provides for the subscription by the State, of a sum not exceeding $300.000, when that amount, together with what has been subscribed, will finish the road.

Section 10 Provides, That no payment shall be made, nor said subscription be binding on the State, unless the Annapolis and Potomac Canal Company shall release the State from her obligation to subscribe for $500.000, of said Canal Company's stock, which obligation was imposed upon the State by Sec. 8, of Act of 1836, ch. 295, the "eight million loan bill."

Private parties subscribed $50.000, and the State $300.000, constituting the whole capital of the company. (Plaintiff's brief, page 13.)

Looking at these provisions, the Court (Record, page 10,) very forcibly says, "within less than a year after the passage of this Act, (eight million loan bill,) the appellee, (plaintiff,) obtained its charter, and it is not probable or fair to suppose, in the absence of a plain and direct expression to the contrary, that the Legislature either deliberately designed a breach of the pledge solemnly made but a few months before, or a departure from the policy so emphatically declared, or that it would have entertained a proposition to do so, with respect to a corporation like the appellee. Especially is this not to be supposed in regard to the charter of the appellee, as by the 10th section of that charter, the eight million loan Act is referred to in terms, and the subscription to the capital stock of the company, authorized to be made by the Treasurer of the State, was required to be paid out of money that might be realized under the eight million loan Act, and that alone. The appellee was, therefore, a recipient of a part of the very fund for which the faith of the State stood pledged—that no property within her borders should escape taxation."

Having shown as we think:

1. That the sections of the B. & O. charter were not incorporated into the charter of plaintiff;

2. That all the powers in those sections were not conferred upon the plaintiff;

3. That no exemption of *shares* from taxation, was conferred upon plaintiff—

It is plain, if this Court agrees with us in this, that there was no contract; and it is an end of the case, as is admitted on plaintiff's brief. (Page 11.)

II.

Does an exemption of the shares of stock exempt the property of a corporation from taxation?

That the *shares* of stock of a corporation are one property with one ownership, and the property of the corporation another property

with a different ownership, and also that the taxing of shares does not prevent the taxing of the property of the corporation, and hence, the exemption of shares does not exempt the property, is well settled.

1865—3 Wall, 583, Van Allen vs. The Assessors.
5 Otto., 679, Farrington vs. Tennessee.
1837—2 Y. & C., 268, Alderson vs. Gurney.
1846—9 A. & E., 817, Queene vs. Arnaud.
1854—10 Exch., (Hur. & Gor.,) Watson vs. Spratley.

Chief Justice Taney, in Debolt's case, 16 How., (page 236,) said: "It would be impossible for this Court to exercise any appellate power in a case of this kind, unless it was at liberty to interpret for itself the instrument relied on as the contract between the parties." Also, speaking of the law in that case, "and if that construction did not impair the obligation of the contract, as interpreted by this Court, there would be no ground for interfering with the judgment, for then the contract, as expounded here, would not be impaired by the State law."

Here then is announced, plainly, that when a party brings a contract into this Court, the Court will first proceed to interpret the scope and meaning of the instrument by the rules of law established by itself in cases of like contracts, and then consider whether the obligation of the contract thus determined, has been violated by the law complained of.

Now, under the decisions of this Court, it cannot be for a moment claimed that a contract to exempt "*shares of stock*," is a contract to exempt *property*.

The plaintiff brings into this Court an instrument which the State Court has decided was not a contract, and asks this Court to reverse the State Court, and declare it to be a contract, and then, no matter how skillfully the argument is put, practically asks not to have the contract construed by the well settled rules of law of this Court in similar cases, not even by the rules of law of the State at the time it was made, (1836,) for then there were none, the first case, (the tax cases, 12 G. & J.,) being decided in 1841, but by rules laid down in the construction of what is claimed as a similar contract, made in 1826, and construed by the State Court in 1848, twenty-two years afterwards, and twelve years after the passage of the charter of the plaintiff.

The Maryland Rule Examined.

But, supposing that the rule, as claimed in Maryland, *that the* SHARES OF STOCK *of a corporation, for* THE PURPOSES OF TAXATION,

represent the property of the corporation just as the capital of a man represents his property, is to have any weight in this Court, let us examine if it is based on those sound principles, uniform and consistent decisions leading to logical conclusions and correct results, without which no doctrine should have or can have much, if any, weight.

Although the rule is claimed to have been established in 1841, and by repeated decisions since, the Court of Appeals, in State vs. N. C. R. Co., in which this very question had been argued, after deciding the case on other points, uses this pointed language in 1875, in its opinion, on page 169 of 44 Md.: "*In regard to this question, we are not to be understood as expressing any opinion.*" Understanding this to mean some slight intimation of a doubt, on the part of the Court, of the correctness of the rule claimed to be established, and being thoroughly convinced in our own mind, by the exhaustive English opinions, and the able opinions of this Court, of its incorrectness, we filed in this case, in the Court of Appeals, an argument, in which we contended that the rule was not thoroughly established, and if established, it was wrong, and should be reversed. As that argument contained very fully our views of the unsoundness of the rule, we insert a portion of it.

Extract from Brief filed in Court of Appeals.

After arguing various questions, we say:

"*Two Principles Claimed to be Established.*

1. That shares do not represent the property of a corporation for purposes of taxation—we claim to have established by reason, by the English decisions, 1837, 2 Y. & C, 295; 1846, 9 Ad. & E, 817; (these two cases decided before 1848, 6 Gill;) 1854, 10 Exch., 236, and by decision of S. C., of U. S., 3 Wal.

2. That exemptions are strictly construed, and no right of taxation is surrendered, unless the intention to surrender is manifested in words too plain to be mistaken, is well settled.—(4 Peters, 561, 5 Gill, 237.)

Bearing these two principles in mind, let us consider as a new question the clause of exemption, viz: "The *shares* of the capital stock of the said company shall be deemed and considered personal estate, and shall be exempt from the imposition of any tax or burthen by the State assenting to this law," would it occur to any mind illuminated with the light of the present decisions, or even the two English decisions before 1848, that anything but the shares, made personal property by the very exemption, were exempted in the hands of the shareholders?

Was it not a most liberal inducement to subscribe, to say to a man, put your $100 in this corporation, and it will not be taxed, no matter how valuable it may become, you will not be taxed on the share?—Could the Legislature have meant to exempt the real and tangible personal property of the corporation? If the rule of taxation, as we believe is right, when there is no exemption, viz., to tax the share and tax the property, was it not most liberal in the Legislature, and all that could be claimed under a fair, and especially under a strict construction of the language, only to tax the property of the corporation, and allow the shareholders, unlike the shareholders of other corporations, to escape all taxation? Is it not a strained construction, that could only arise from wrong premises and wrong reasoning, that would seek to give a more liberal construction as to what the Legislature intended?

It is true that 6 Gill decides differently. We need not here advert to the fact of the great benefit and relief that would accrue to the taxpayers of the entire State, from a reversal of that opinion? The Maryland Judiciary have been noted for their ability in discovering error, and their manly bravery in exposing and correcting it, even when found in their own opinions. It is this capability of discovering, acknowledging and correcting error that distinguishes greatness from mediocrity. It is of all things, the most essential quality of a Judge of a Court of last resort. It is this quality that enables the *strong* Judge to shake off, and set aside the "*ita lex scripta*," which a *weak* one too often, unfortunately shields himself behind, and fears to controvert, although conscious that it works hardship to the people, and should never have been so written. Is there not too great a tendency in lawyers and Courts, to give weight to decided cases without investigating as closely as they ought, the soundness of the principles upon which the decision is based?

We have no hesitancy then, in asking this Court to reverse 6 Gill, if we can show them that the opinion in that case was based on wrong assumptions and the application of wrong principles of law.

We claim there were too radical errors in the opinion in that case, upon which the whole force of the opinion rests.

1. It is assumed, (page 296,) that the shares for purposes of taxation, represent the property of the company.

2. On page 297, after assuming what was the intention of the Legislature *twenty years* after it was declared, the Court says, "In expounding, therefore, those provisions of the charter of the company,

by which its expressed privileges and *exemptions* are imparted, *liberal rules* of interpretation for its benefit ought to be adopted to effectuate the benevolent designs of the Legislature.

Can a single authority be found anywhere to support *liberal* rules of interpretation of an exemption from taxation? Does not every case, from 4 Peters, 561, down to 21 Wal., 498, establish the contrary doctrine of a strict, the most strict construction. When a Judge announces, and a Court allows such a palpably erroneous principle to be announced, must it not materially affect, if not destroy, the force of the whole opinion?

It follows then, that this Court must now say that either the first assumption in 6 Gill, in reference to shares is wrong, or that the three English cases, (two decided before 6 Gill) and the S. C. of the U. S., are wrong; which do the Court think is entitled to the most weight?

And they must also say that a liberal construction of an exemption is wrong, or that all their own decisions, the decisions of the S. C., and almost every Court in the land, that exemptions are not to be presumed, all presumptions are against them, and the strictest construction of which the language is capable applied to them, are wrong.

If 6 Gill, decided in 1848, was wrong, as we claim to have shown, then, for thirty to fifty years, the most powerful and richest "person," the B. & O. R. R. Co., in the State, has paid no takes upon property, of which it was the "sole owner," and was, by the exemption from his or its legitimate burthens, enabled to pay enormous interest to the individuals who advanced to it the money to conduct its business. Can those individuals now complain, after enjoying those great benefits, to which they were not entitled, if they receive less interest, because the property of this great "person" is made to bear in the counties and cities where located, according to the Act of 1870, ch. 159, its just proportion of contribution for the protection it receives?

So far as the shareholders of the appellee are concerned, the road being hopelessly insolvent, and the shares valueless, they will not be affected, in the least, by the decision in this case.

Let us now turn and examine the cases *seriatim* which are claimed to decide that shares represent property—they will be found collected in 41 Md., page 49.

1841.—12 G. & J., 117, The Tax Cases.

It is to be regretted that in a case involving so many important principles, we are left to gather from the head-notes, which may or

may not be exactly correct, and the argument of counsel, what questions the Court did actually consider. The fact that no written opinion was delivered, and no reasons assigned, greatly lessens the weight that must attach to any decision claimed in that case. Although the banks, in this case, were paying a tax or bonus for their franchises under Act 1821, ch. 131, which was a part of the valuable property of said banks, yet the Court decided that its shareholders could be taxed. This opinion was, however, reversed, and the banks exempted from taxation, in Gordon vs. Appeal Tax Court, 3 How., under their construction of the contract created by the Act.

1847.—5 Gill, 231, Gordon vs. M. & City Council of Balto.

Gordon was a shareholder in the Union Bank. The question presented and decided was that the contract of exemption, held by 3 How., to be made by Act of 1821, ch. 131, sec. 11, only applied to State tax, and not to city tax. No question of the taxation of property and shares was presented or decided, and all said on that subject was the extraneous *dicta*, and should have little or no weight.

1848.—6 Gill has been discussed.

1863.—20 Md., 515, State vs. Stirling.

This was the case of a Savings Bank, incorporated by Act 1818, ch. 93, and a tax levied upon the bank for deposits. The Court, (page 518,) draws a distinction between Savings Banks and other corporations, and held that 'this bank charter contemplated deposits and investments to be one and the same.' It does not establish the principle it is cited to support.

1865.—20 Md., 296, Insurance Co. vs. Mayor & C. C. of Balto.

It was contended in this case that the corporation, in its entirety, owned its capital stock, and the Court decided it did not.

It is nowhere said that the shares represent the property, the reasoning of the Court rather tends the other way.

We claim then, these cases, upon examination in this Court, do not establish the doctrine that shares represent property.//

The case at bar, and the case of the B. & O. R. R. Co., were argued the same term, October, 1877, and Judge Bowie, in the latter case, (48 Md., page 92,) in a dissenting opinion, says: "With profound respect for the great learning and ability of the Bench which decided the earlier tax cases in this State, upon which all the subsequent decisions depend, I am unable to concur in the doctrine supposed to be established by them, viz: that the shares of stock in a joint stock corporation represent all the franchises and property, real and personal,

which the corporation acquires and holds, and consequently the exemption of the shares is an exemption of the franchises and property of the corporation."

Result of the Rule.

In Maryland, up to 1876, all corporations were taxed by taxing their shares of stock. Now, a corporation owning $100,000 of real estate, whose shares had deteriorated until they were only worth $10,000 under the rule that for taxing purposes the shares represent and of course equal the property, we have the astonishing mathematical result: shares of stock worth $10,000=$100,000 worth of real estate.

Inconsistencies of the Maryland Decisions.

It seems clear to us that if the shares represent the property, the property must represent the shares, and if the exemption of the shares exempts the property, the exemption of the property must exempt the shares. These propositions must go hand in hand, for it is a homely, but true adage "That it is a poor rule that will not work both ways." In 1874, in Emory vs. State, 41 Md., 38, the converse proposition was urged with great force. That was a case in which the capital of a corporation, of which Emory was president, or a large portion of it, was invested in mortgages. The Legislature had, by Act of 1870, chapter 236, said: "Nor shall any tax, of any kind, be assessed, levied or collected on any mortgages, of any kind, or on any mortgage (or) bill of sale, upon any property in the State," yet the Court held that the shares were not exempt. Now, suppose Emory had, before this Act, $100,000 of private capital, all of which was invested in mortgages, that capital, after the Act, would have been exempt, and suppose the capital of this corporation, of which he was president, was $100,000, and he owned all the shares, all the capital being invested in mortgages, if the Court was guided by the principle referred to, that for purposes of taxation Emory's shares in the corporation represented, and was represented by the mortgages, must not the Court have been forced to the same conclusion in both cases? Does not the different decision, based upon the technical construction of the Act of 1870, show a desire, on the part of the Court, to escape the legitimate and logical results of the rule referred to.

Again, the B. & O. R. R. Co., under the powers of its original charter, and of powers conferred by subsequent Legislatures, acquired hotel property, grain elevators and steamships. Now, surely its shares of stock represent these hotels, elevators and steamships, as fully as they represent its road-bed, rolling stock and machine shops,

and surely it cannot be contended, notwithstanding its large acquisition of property, under subsequently acquired power, that its shares of stock, or any portion of them, could be taxed, and if the shares represent any property, they must represent all, and if the exemption of the shares exempt any property, it must exempt all, yet this Court, after determining the "*intention*" of the Legislature, in 6 Gill, 28 years after it was declared, to be, to exempt all the property of the corporation, now construe the "intention" of the Legislature, 54 years after it was declared, to be, not to exempt this newly acquired property, in 48 Md, 49, State vs. B. & O. R. R. Co.

Now, as the shares could not be taxed, is not a decision that taxes any portion of the property, practically a decision that the shares do *not* represent the property? Does not an examination of all the cases, bring the belief, that had this question been presented to the Court of Appeals of Maryland, in 1877, and the Court been relieved of what it considered the binding force of the earlier cases, it would have received a different solution?

It is then submitted, that while this Court will not consider the Maryland rule in construing a contract brought before it, still less will it consider a rule based on such unsound principles, and conflicting decisions.

III.

Examination of Argument in Plaintiff's Brief.

Let us now examine the ingenious and able argument filed on behalf of the plaintiff in error.

2. In the second point the plaintiff claims, (page 11,) not that the "powers and privileges," but that "it is manifest, that all the sections of the law incorporating the B. & O. R. R. Company, referred to in the charter of the plaintiff, were intended to be incorporated into, and made parts of its charter."

Incorporate means "to associate, to embody, to unite into one mass."—Wor. Dic.

Section 3rd of plaintiff's charter, refers to sections 3, 4, 6, 7, 8, 9 and 10 of B. & O. charter. The plaintiff has in its charter, the same sections, (plaintiff's brief, pages 2, 3, 4,) with different provisions than those referred to in the B. & O. charter. Now if the reference brings into the charter of plaintiff, the sections of the B. & O. Co., how are we to determine which are sections 3, 4, 6, 7, 8, 9 and 10 of plaintiff's charter? How would you read the charter? Plaintiff claims, (brief, page 12,) "We say that the Act of 1836 is to be read in connection with these nineteen sections as if they had actually been incorpor-

ated therein, instead of being referred to as parts of another charter." Yet the plaintiff, in brief, page 16, says: "Of course there were some provisions appropriate in a scheme for a road to the Ohio river, that would not be necessary in making the one proposed, but there could be no difficulty in determining which provisions were applicable and which were not, for the latter purpose."

Now either all those sections were incorporated into plaintiff's charter, if any were. And why should it be insisted without plain words to that effect, that the Legislature had incorporated into the charter of a company provisions confessedly "inapplicable."

10 Howard, 379, relied on by plaintiff, only decided that when several companies were consolidated, that the new company had all the rights, privileges and *exemptions* then existing; in the charter of the new company, the State did not part with any right of soverignty which she then held.

16 *Wall.*, 244, *Humphrey vs. Pegnes.*

This case is especially relied on by plaintiff, and we will proceed to examine it and note the differences between it and the case at bar, What was that case?

In 1851 in S. Carolina, the Northeastern R. R. Co. was incorporated, but was not built. In 1855 the charter was amended, "the stock of the company and the real estate "were exempted from taxation."

Now in 1849, prior to these Acts, the C. & D. Road had been incorporated, and by its 5th section, had all the rights and privileges of the W. & M. Road. Now the C. & D. Road had, says Court in its opinion, page 249, "not found sufficient inducements to build its road from 1849 to 1863," a period of *thirteen* years. In 1863, the 5th section of the C. & D. Road was amended so that the whole section reads as follows: "That all the powers, rights and privileges granted by the charter of the Northeastern Railroad Company, are hereby granted to the Cheraw and Darlington Railroad Company, and subject to the conditions therein contained." How different is this 5th section from the 5th section of plaintiff's charter?

First. All the powers and privileges in the Northeastern Road are granted, for under this sweeping language it could not be contended that there was a single power or privilege not conferred.

Second. The powers and privileges are granted to the corporation, and not to the President and Directors to "have and use."

Third. They were granted unconditionally and without the words of limitation, "*necessary for that purpose*" contained in the plaintiff's charter.

Fourth. The examination of the legislation of the State almost immediately proceeding, and in reference to the very road whose charter was referred to, showed that the State had before this granted exemption to a road already incorporated but not built, for the very purpose of inducing its construction. No such legislation shown in the case at bar.

Fifth. The fact that the Legislature referred not to the original charter of the Northeastern Road, but to the *charter* showed that they intended to include the amendment in which the exemption was contained.

In that case it was not contended or shown, that any power or privilege (as in the case at bar) was not given. To show that some of the views advanced by us were entertained by this Court, in the above case, we quote from its opinion, pages 248 and 249: "The case shows that from 1849 to 1863, no sufficient inducements had been found to procure the building of the Cheraw road. * * * The road was soon afterwards built, and has since then been, and now is, in operation. These facts serve to show, first, that there was, in this instance, the consideration that at any time exists for the granting, by the Legislature, of such privilege, to aid the acceptance of the same, and the building of the road; and, *secondly*, the intention of the Legislature by omitting a reference to the original Act of Incorporation to grant all the powers and privileges that had been, at any time, conferred upon the Northeastern Company."

3. In the third point of argument, page 13, the plaintiff seeks to impair the able opinion of the Court of Appeals, by attempting to confine its opinion of the powers and privileges conferred technically to those "necessary for construction and repair," leaving out those necessary for operating, which a perusal of the Court's opinion will show, we think, were in the Court's mind, especially as it had before it the second section of the plaintiff's charter, which, as we have before shown, incorporates the plaintiff, as soon as $500,000 is subscribed by its name; and further provides: "And by that name shall have succession, and be capable of purchasing, holding, selling, leasing and conveying estates, real, personal and mixed, so far as shall be necessary, for the purposes hereinafter mentioned, and no further, and by said corporate name may sue and be sued, and may have and use a common seal, and the same may alter and renew at pleasure; *and shall have, enjoy and exercise all the* powers, rights and privileges, which other corporations may lawfully do, to carry into effect the purposes of this Act."

Now did the plaintiff believe? Does this Court believe, that the Court below, with this section before it, meant to say literally, that plaintiff had no powers, except those "necessary for construction and repair" none for operating the road. Is not such an attempted inference of the language used by the Court, unjust and unwarranted, when we look at the case and the whole opinion?

4. 5. 6. The fourth, fifth and sixth points of plaintiff's argument, pages 15, 16, 17, 18 and 19, are based on the erroneous (as we think) assumption, that the sections referred to, were incorporated into, and became a part of plaintiff's charter, instead of certain powers and privileges that were mentioned in said sections, being conferred upon the plaintiff, which has been heretofore discussed.

On page 17, the plaintiff claims, that as by section 9, the State was made a preferred stockholder; that it was done as a consideration for exemption, grated to the company.

Does not a reference to the 9th section of plaintiff's charter, show that the State was made a prefered stockholder, just as John Smith or any individual might have been, in consideration of the State's advancing $300.000, for the purpose of building the road. And section 10 of plaintiff's charter, shows a consideration, in addition to being made a preferred stockholder, received by the State for its subscription, viz: the State was to be released from the obligation then resting upon it, of subscribing $500.000 to the Annapolis and Potomac Canal Company. These were the expressed, and evidently, the only considerations (and they were good ones,) that the Legislature had in their minds; and we submit, that it is a most strained construction, when the plaintiff attempts to strengthen its case for exemption, contending in the face of the consideration set up in the in the contract of subscription; (secs. 9 and 10 of plaintiff's charter,) that the State in making that subscription, intended to confer exemption upon the plaintiff, in consideration of the plaintiff consenting to make it a preferred stockholder.

We would just here remark, that as the State owns seven-tenths of the stock, under the Maryland law, she owned nearly all property, indeed, the plaintiff on page 17 of brief, contends that it "was practically her own property." And following out the Maryland rule, we have in this case, a corporation coming into this Court, and asking to be relieved from taxation imposed by a county, under a a law of the State, upon property *not belonging to the corporation*, but, confessedly, to the *State* that passed the law.

6. In the sixth point of the argument, (page 19, and also page 17,) it is contended that the fact that the plaintiff was never taxed by the State and local authorities, and an understanding by the public that it was not to be taxed, is to have weight here. Now, if it could be shown that plaintiff's charter had long ago received judicial construction, like the cases in 9 Wall., 50 and 48 Md., 71, and that construction acquiesced in for a long number of years, there might be some color of claim in it. The force of that acquiescence could of course best be judged of by the State judges, yet the Court of Appeals of Maryland the first time the charter of plaintiff is presented to them, notwithstanding the claim of acquiescence of State and local authorities, declare it not to contain any contract of exemption.

A great deal is said in the brief, and in 48 Md., about the large interests involved, and money invested, which, however applicable to the B. & O. Road, can have no bearing upon the case of the plaintiff, its stock, we believe, never having had any market value. And, as prior to 1876, all corporations were assessed on their capital stock, there was nothing to assess, especially as the State owned seven-tenths of the stock, and you could not assess the stock belonging to the State.

We claim to have established:

1. That the plaintiff's charter contained no contract.

2. That the contract claimed is a contract to exempt "shares of stock," and that if it exists it would not exempt the *property* of the company.

And, therefore, the Act of 1876, chapter 159, under which the property of the plaintiff was taxed, does not violate any contract, hence the decision of the Court of Appeals, directing the property of plaintiff to be placed on the assessment list of the county, should be affirmed.

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